



## **RESOLUTION**

AUTHORIZING EXECUTION OF A PURCHASE AND SALE AGREEMENT RELATING TO THE ACQUISITION OF LEASES OF TWELVE CITY-OWNED AFFORDABLE HOUSING PROJECTS BY HONOLULU AFFORDABLE HOUSING PARTNERS, LLC, AS PART OF THE HONOLULU AFFORDABLE HOUSING PRESERVATION INITIATIVE.

WHEREAS, on February 15, 2012, as part of its Honolulu Affordable Housing Preservation Initiative ("HAHPI") the City and County of Honolulu issued a request for proposals (the "RFP") for the lease of twelve City-owned affordable housing projects: Bachelors Quarters, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Kanoa Apartments, Kulana Nani Apartments, Manoa Gardens, Marin Tower, Pauahi Hale, Westlake Apartments, West Loch Village and Winston Hale (collectively, the "Projects"); and

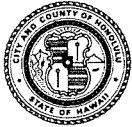
WHEREAS, on May 9, 2012, the Honolulu City Council adopted Bill 23, CD1 (Ordinance 12-12), which clarified and confirmed that with respect to the HAHPI program, the RFP process pursued under Section 28-3.5, Revised Ordinances of Honolulu ("ROH"), could encompass the entirety of each rental complex, including affordable, gap group, and market-rate rental housing units, commercial space, parking facilities, and telecommunication facilities; and

WHEREAS, Ordinance 12-12 also provided for a redevelopment option to be included into the leases for Pauahi Hale, Winston Hale, Bachelors Quarters, and Kanoa Apartments; and

WHEREAS, on May 9, 2012, the Honolulu City Council also adopted Bill 24, CD1 (Ordinance 12-13), which facilitated the HAHPI program by providing for the transfer of public parking at Marin Tower, Chinatown Gateway Plaza, and Harbor Village via long-term leases, while reserving to the City the use of a specific number of parking spaces in these Projects for public parking, and reserving for the City Council the right to set time limits, parking fees, and other regulations for the public parking spaces;

WHEREAS, a total of seven initial proposals were received for the Projects by the April 20, 2012 deadline, and after follow-up discussions between the City and the proposers, seven "best and final offers" were received by the May 22, 2012 deadline; and

WHEREAS, an evaluation of the proposals was conducted by a five-member selection committee (one of whom was designated by the Council), with the committee members individually scoring each of the proposals; and



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WHEREAS, upon conclusion of the RFP evaluation process, the City selected Honolulu Affordable Housing Partners, LLC ("HAHP") to be the lessee of the Projects; and

WHEREAS, in accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on August 22, 2012, identifying HAHP and the other two top-rated proposals for the public record; and

WHEREAS, the City and HAHP have negotiated the terms of a Purchase and Sale Agreement ("PSA"), including payment of an up-front lump-sum acquisition lease rent payment or "lease premium" in the sum of One Hundred Forty Two Million And No/100 Dollars (\$142,000,000); and

WHEREAS, the PSA requires HAHP to use its best efforts to expend \$42,000,000 for initial capital improvements to the Projects within two years (but not less than \$40,000,000 within three years) after the closing of the sale, of which a minimum amount of \$35,000,000 must be for hard renovation costs generally defined as actual construction expenses; and

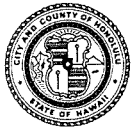
WHEREAS, under the PSA, HAHP may assign three Projects, Pauahi Hale, Kanoa Apartments, and Bachelors Quarters, to one or more nonprofit(s) but in the meantime is required to invest a minimum of \$450,000 in the aggregate for the renovation of these Projects; and

WHEREAS, under the PSA, the nonprofit(s) will have the option to redevelop these Projects in the future as allowed under the Project leases and in accordance with the requirements and process outlined in Ordinance 12-12, which includes a one-for-one replacement of existing affordable housing; and

WHEREAS, under the PSA, HAHP proposes to restructure the unit mixes in the retained rental housing complexes to increase up to 971 the number of affordable housing units designated for households earning less than 60 percent of median income; and

WHEREAS, HAHP will finance the purchase of the Projects through the use of tax-exempt multifamily bonds and low-income housing tax credits ("LIHTC") issued by the Hawaii Housing Finance and Development Corporation ("HHFDC"), as well as financing obtained through commercial lenders; and

WHEREAS, other financing contemplated by HAHP includes interim financing through the State of Hawaii Rental Assistance Revolving Fund and assistance through the State Rental Housing Trust Fund; and



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WHEREAS, the PSA calls for the City to cooperate with HAHP regarding financing by submitting five mixed-use Projects, Marin Tower, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village and Winston Hale, to condominium property regimes ("CPRs"), and forming separate ownership entities to own the affordable housing units, the market-rate housing units, the commercial space, and parking garages; and

WHEREAS, upon approval and execution of the PSA, the City will issue a Notice to Proceed for HAHP to begin a 60-day due diligence period relating to the long-term leasing of the Projects, upon the conclusion of which HAHP must notify the City whether it will approve the condition of the Projects and will move forward with closing; and

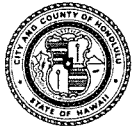
WHEREAS, the PSA provides for closing of this transaction by April 1, 2013, assuming required financing is secured, with provisions for extensions to September 26, 2013, with a provision for the City to further extend the closing date beyond this date, but by no means beyond March 31, 2014; and

WHEREAS, for applicable Projects, the PSA contemplates continuation of federal HOME Investment Partnership Act HOME program requirements until such time as they expire, as provided for under HOME program rules, with continuation of City-imposed rent restrictions and income targeting guidelines comparable to the HOME program requirements thereafter throughout the terms of the leases; and

WHEREAS, the PSA contemplates that the City will pursue a buy-out of the Community Development Block Grant ("CDBG") program requirements from the U.S. Department of Housing and Urban Development ("HUD"), but in the event that the buy-out price exceeds \$50,000,000, the City will have the right to terminate the PSA, with its sole obligation being to reimburse HAHP for its reasonable actual out-of-pocket negotiation, due diligence, and closing preparation expenses, such reimbursement not to exceed \$500,000;

WHEREAS, the City and HAHP have agreed to limit the remedies available to either party, most significantly requiring HAHP to waive the remedy of specific performance and to accept liquidated damages for a City default under the PSA, capped at \$2,000,000, whereas the City would be entitled to retain HAHP's deposit of \$5,000,000 as liquidated damages in the event of a HAHP default; and

WHEREAS, the Council finds that the proposed transaction contemplated by the PSA is in the public interest in that it: (1) brings in a private-sector partner with the experience and capacity to manage the City's rental housing complexes into the future, (2) provides for capital improvements that are needed to enhance the living environments for Project residents, (3) increases the number of rental housing units



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affordable to lower-income households earning less than or equal to 60 percent of median income, and (4) provides for a substantial payment to the City that will be used for defeasance of City bond debt and for deposit into the City's CDBG and HOME program accounts; and

WHEREAS, it is the Council's intention to budget at minimum \$5,000,000 from the proceeds of the sale of the City's property interests to the rental assistance fund to be used to prevent the displacement of qualified tenants from the Projects; and

WHEREAS, the Council further finds that the terms and conditions of the proposed PSA are reasonable and appropriate; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

- 1) The Purchase and Sale Agreement is approved substantially in the form attached hereto as Exhibit A;
- 2) The Director of Budget and Fiscal Services is authorized to execute the Purchase and Sale Agreement;
- 3) The Mayor, the Director of Budget and Fiscal Services, or the Director of Community Services is hereby authorized to execute any incidental or related documents to carry out the transaction described above, as long as such documents do not increase either directly or indirectly the financial obligation of the City; and





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BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk be, and is hereby directed to transmit copies of this Resolution to Michael R. Hansen, Director of Budget and Fiscal Services, and Samuel E. H. Moku, Director of Community Services. A copy of this Resolution shall also be transmitted to Honolulu Affordable Housing Partners, LLC, c/o Highland Property Development LLC, 250 W. Colorado Boulevard, Suite 210, Arcadia, California 91007.

INTRODUCED BY:

Ernest Martin (BR)

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DATE OF INTRODUCTION:

August 22, 2012  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

**PURCHASE AND SALE AGREEMENT**

**between**

**CITY AND COUNTY OF HONOLULU**

**as City**

**and**

**HONOLULU AFFORDABLE HOUSING PARTNERS, LLC**

**as Buyer**

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made as of \_\_\_\_\_, 2012 (the “**Effective Date**”) by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai‘i (the “**City**”), and **HONOLULU AFFORDABLE HOUSING PARTNERS, LLC**, a Hawai‘i limited liability company (“**Buyer**”), in the following factual context:

**A.** The City owns the following 12 rental housing projects (together, the “**Projects**”, and each, a “**Project**”) located on the island of Oahu, State of Hawai‘i:

<u><b>Rental Housing Complex</b></u>	<u><b>Location</b></u>
Bachelors Quarters	Ewa Villages
Chinatown Gateway Plaza	Chinatown
Chinatown Manor	Chinatown
Harbor Village	Chinatown
Kanoa Apartments	Palama
Kulana Nani Apartments	Kaneohe
Manoa Gardens	Manoa
Marin Tower	Chinatown
Pauahi Hale	Chinatown
Westlake Apartments	Salt Lake
West Loch Village	Ewa Beach
Winston Hale	Chinatown

**B.** The Projects are situated on the lands more particularly described in **Exhibit A** attached hereto (collectively, the “**Land**”). Any and all buildings, structures, systems, facilities, fixtures, fences and parking areas located on the Land, and any and all machinery, equipment, apparatus and appliances incorporated into the foregoing, except as may be owned by the City’s tenants, are collectively called the “**Improvements**”. The Land and Improvements are referred to collectively as the “**Property**”.

**C.** The City’s objective is to preserve the City’s portfolio of rental housing complexes as an affordable housing resource for the community by transitioning leasehold ownership of the Projects to a private entity such as Buyer, with the experience, capacity, and resources to operate and maintain the Projects over the long term. Buyer desires to lease, improve, and operate the Property, as more specifically set forth in this Agreement.

**D.** Pursuant to the Proposal submitted by Buyer in response to the Request for Proposals relating to the Honolulu Affordable Housing Preservation Initiative, dated February 2012, as amended (the “**RFP**”), the City has agreed to enter into long-term Leases of the Projects (as defined below in Section 1.1) with Buyer subject to and in accordance with this Agreement.

**E.** All of the Projects include income-restricted rental housing units, but some Projects also include market-rate rental housing units, commercial tenant spaces, and parking facilities. In addition, the City has suggested that four of the Projects (namely, Bachelors Quarters, Kanoa Apartments, Pauahi Hale, and Winston Hale) may be suitable for redevelopment.

**F.** As analyzed by Buyer for purposes of the Proposal submitted by Buyer, the Projects variously and collectively consist of and include the following product types, components, or uses ("**Project Use Components**"): (i) the rental of income-restricted housing apartment units (the "**Affordable Rental Housing Component**"); (ii) the rental of market-rate apartment units (the "**Market Rental Housing Component**"); (iii) the rental of commercial space (the "**Commercial Rental Component**"); (iv) the management and rental of parking spaces to the public ("**Public Parking Component**"); (v) the management and rental of parking spaces to residents of the Projects (the "**Resident Parking Component**"); and (vi) three of the four projects (Bachelors Quarters, Kanoa Apartments, and Pauahi Hale) that the City has suggested are suitable for redevelopment (the "**Redevelopment Component**"). (The Public Parking Component and the Resident Parking Component involve parking spaces and facilities in the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects. Various of the other Projects also include parking spaces that are rented or reserved exclusively for residents of said Projects as integral parts of the operation of such Projects as income-restricted rental housing projects. The parking spaces associated with those Projects are treated as part of the Affordable Rental Housing Component.)

**G.** As used in this Agreement, the Affordable Rental Housing Component, the Market Rental Housing Component, the Commercial Rental Component, the Public Parking Component, the Resident Parking Component, and the Redevelopment Component mean and refer, respectively, to the following Projects or the indicated number of units, commercial space, or parking spaces in each Project making up such Project Use Component therein:

<u>Affordable Rental Housing Component</u>	<u>Market Rental Housing Component</u>	<u>Commercial Rental Component</u>	<u>Public Parking Component</u>	<u>Resident Parking Component</u>	<u>Redevelopment Component</u>
Kulana Nani - Entire Project					
Manoa Garden - Entire Project*					
Westlake Apartments - Entire Project					
West Loch Village - Entire Project					
Chinatown Gateway Plaza – 119 Units	Chinatown Gateway Plaza – 81 Units	Chinatown Gateway Plaza – commercial space	Chinatown Gateway Plaza – 80 public parking spaces	Chinatown Gateway Plaza – 194 parking spaces	
Chinatown Manor – 90 Units		Chinatown Manor – commercial			

<u>Affordable Rental Housing Component</u>	<u>Market Rental Housing Component</u>	<u>Commercial Rental Component</u>	<u>Public Parking Component</u>	<u>Resident Parking Component</u>	<u>Redevelopment Component</u>
		space			
Harbor Village – 60 Units	Harbor Village – 30 Units	Harbor Village – commercial space	Harbor Village – 76 public parking spaces	Harbor Village – 58 parking spaces	
Marin Tower – 161 Units	Marin Tower – 75 Units	Marin Tower – commercial space	Marin Tower – 258 public parking spaces	Marin Tower – 156 parking spaces	
Winston Hale – 94 Units		Winston Hale – commercial space			
					Bachelors Quarters
					Kanoa Apartments
					Pauahi Hale

\*41 of 80 units. See Section 5.17(e) below.

H. Buyer desires to lease, improve and operate the Property, as more specifically set forth in this Agreement. Subject to the terms and conditions of this Agreement, the City is willing to allow Buyer to undertake due diligence relating to the Projects and to enter into long-term Leases of the Projects and the Property with Buyer subject to and in accordance with this Agreement. The economic provisions contained in this Agreement have been negotiated and approved based upon, among other things: (i) Buyer's undertaking due diligence, performing under the terms of the Leases and performing all other obligations set forth in this Agreement; (ii) Buyer's intended financing for the different Project Use Components as set forth in Section 5.14 and the City's reasonable cooperation in connection with certain of such financing; and (iii) the City's undertaking to lease the Property to Buyer as set forth in this Agreement, subject to the terms and conditions contained herein.

I. As set forth in Buyer's Proposal in response to the RFP, Buyer intends to acquire the long-term Leases for the Projects by obtaining different sources of financing for each of the respective Project Use Components. As more specifically provided in this Agreement, Buyer intends, for this purpose and to facilitate such financing, to form several different subsidiary entities, each of which, respectively, shall acquire from the City direct long-term Leases for the Projects based on and limited to one or more of the Project Use Components. Since certain of the Projects (namely, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale) consist of multiple and different Project Use Components, the City has agreed as set forth in this Agreement to cooperate with Buyer in "condominiumizing" these Projects: that is, joining with Buyer in filing a declaration and other documents reasonably acceptable to the City and in conformity with Chapter 514B of the Hawai'i Revised Statutes in order to submit each of these Projects to a condominium property regime so that the Affordable Rental Housing Component, the Market Rental Housing Component, the Commercial Rental Component, the Public Parking Component, and the Resident Parking Component, as the case

may be in each such Project, can be separately leased by the City to one or the other of Buyer's subsidiary entities and separately financed accordingly.

J. This Agreement and the Leases shall be submitted to the Honolulu City Council for review and approval via the adoption of a resolution, thereby authorizing the City to sign this Agreement and the Leases.

**NOW, THEREFORE**, the parties agree as follows:

## **SECTION 1 PURCHASE OF LEASES**

**1.1** Subject to the terms and conditions of this Agreement, at the Closing (as defined in Section 7.1), the City shall lease the Property to Buyer, and Buyer shall lease the Property from the City pursuant to separate leases (a separate Lease for each Project Use Component of each Project). The form of the lease for the Project Use Components of the Projects that shall not be submitted to condominium property regime (i.e., condominiumized as provided in this Agreement) shall be in substantially the form attached hereto as **Exhibit B-1**. The form of the lease for the Project Use Components of the Projects that shall be submitted to a condominium property regime shall be in substantially the form attached hereto as **Exhibit B-2**. Each lease for each Project Use Component shall have attached thereto an addendum applicable to that Project Use Component, which shall be substantially in the form attached hereto, respectively, as follows: **Exhibit B-3** (Addendum for Affordable Rental Housing Component), **Exhibit B-4** (Addendum for Market Rental Housing Component), **Exhibit B-5** (Addendum for Commercial Rental Component), **Exhibit B-6** (Addendum for Public Parking Component), **Exhibit B-7** (Addendum for Resident Parking Component), and **Exhibit B-8** (Addendum for Redevelopment Component). Each such lease is herein called a "**Lease**", and all such leases together are herein referred to as the "**Leases**". The Leases provide for fixed lease rent payment of One Dollar (\$1.00) per year per Lease to the City. This Agreement is for the acquisition by Buyer of the Leases, and the payment by Buyer of an up-front lump-sum acquisition lease rent payment, covering all of the Land and the all of the Improvements for all 12 Projects and, if Buyer accepts the Property pursuant to Section 3.7 below, and subject to the other terms and conditions of this Agreement, Buyer shall close on all 12 Projects. Buyer cannot accept or reject less than all 12 Projects and all Leases shall be entered into simultaneously.

**1.2** The City shall assign certain leases, contracts, service agreements and other third-party agreements for each Project as listed in **Exhibit C-1** attached hereto (the "**Assigned Contracts**"). The assignment of the Assigned Contracts shall be in substantially the form attached hereto as **Exhibit C-2** (the "**Assignment of Leases and Contracts**"). Where there are different lessees in one Project due to separate Project Use Components, Buyer shall either: (a) designate one (1) lessee to be assignee under the Assignment of Leases and Contracts for such Project; or (b) provide the City prior to Closing with a designation of the specific leases, contracts, service agreements and other third-party agreements for such Project that shall be assigned, respectively, to the different lessees which shall acquire Leases of the different Project Use Components in such Project. Notwithstanding the foregoing, the residential rental agreements for all apartment units in the Affordable Rental Housing Component shall be assigned to the lessee of the Affordable Rental Housing Components of the Projects, the residential rental agreements for all apartment units in the Market Rental

Housing Component shall be assigned to the lessee of the Market Rental Housing Component of the Projects, the commercial leases of commercial space included in the Commercial Rental Component shall be assigned to the lessee of the Commercial Rental Components of the Projects, and any residential rental agreements for apartment units in the Redevelopment Component shall be assigned to the lessee of the Redevelopment Component of the Projects.

**1.3** The City shall transfer to Buyer personal property and equipment owned by the City, located at each Project and used in connection with the operation of such Project as listed in **Exhibit D-1** attached hereto (the "**Personal Property**"), to the extent not designated as condominium common elements (in which event Buyer or its Affiliates or other nominees in accordance with Section 11.10(c) and Section 11.10(d) shall acquire all of the interests in such Personal Property as undivided interests in such common elements that are appurtenant to the condominium units for the Project Use Components in the Projects of which such common elements are a part). The transfer of the Personal Property shall be in substantially the form attached hereto as **Exhibit D-2** (the "**Bill of Sale**"). Where there are different lessees in one Project due to separate Project Use Components, Buyer shall either: (a) designate one (1) lessee to be buyer under the Bill of Sale; or (b) provide the City prior to Closing with a designation of the specific Personal Property at each such Project that shall be transferred, respectively, to the different lessees which shall acquire Leases of the different Project Use Components in such Project.

**1.4** Notwithstanding any provisions to the contrary in this Agreement or in any Lease, the City reserves all right, title and interest as the fee owner in the Land, and as grantee, benefitted party or other party other than the fee owner of the Land under any grants of easement, covenants, restrictions, Land Court orders, and other recorded instruments or maps encumbering or affecting the Land (for example and not by way of limitation, rights of the City as grantee under sewer or drainage easements on, through or under the Land), together with the right to grant any easements or rights-of-way, or any other such rights to any third-party with Buyer's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that such grants do not substantially and materially (i) interfere with, or (ii) adversely affect the rights granted to Buyer herein or under the Leases.

## **SECTION 2 PAYMENT OF PURCHASE PRICE**

**2.1 Purchase Price.** In consideration of the City entering into the Leases, and the Assignments of Leases and Contract and the Bills of Sale, but subject to the terms, conditions, and provisions of this Agreement, including the provisions and contingencies respecting Buyer's financing for the transactions contemplated by this Agreement, Buyer shall pay to the City an up-front lump-sum acquisition lease rent payment in the sum of One Hundred Forty-Two Million And No/100 Dollars (**\$142,000,000.00**) (hereinafter the "**Purchase Price**") for the Leases, the Assignment of Leases and Contracts and the Bill of Sale. Upon Closing, the City shall also be entitled to the Reserve Accounts, as provided in Section 5.4(c) below.

**2.2 Method of Payment.** The Purchase Price shall be paid by Buyer to the City as follows:

(a) **Initial Deposit.** Within two (2) Business Days after the Effective Date, and as a condition precedent to the effectiveness of this Agreement, Buyer shall deposit with Title

Guaranty Escrow Services, Inc. ("**Escrow Agent**") by a confirmed wire transfer or other deposit of good and immediately available funds, the sum of One Million And No/100 Dollars (\$1,000,000.00) ("**Initial Deposit**").

(b) Second Deposit. Buyer shall deposit with Escrow Agent a second deposit in the sum of Four Million And No/100 Dollars (\$4,000,000.00) by a confirmed wire transfer or other deposit of good and immediately available funds ("**Second Deposit**") within two (2) Business Days after Buyer has approved or is deemed to have approved the results of Buyer's Due Diligence Investigation in conformity with Section 3.7. The Initial Deposit and the Second Deposit, together with interest earned, if any, on said sums, are herein collectively called the "**Deposit**". THIS AGREEMENT SHALL CONSTITUTE BUYER'S INSTRUCTION AND DIRECTION TO THE ESCROW AGENT THAT THE FUNDS COMPRISING THE DEPOSIT SHALL BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT BEARING THE HIGHEST AVAILABLE RATE OF INTEREST THAT WILL PERMIT IMMEDIATE WITHDRAWAL OF SUCH FUNDS FOR CLOSING AND BUYER SHALL PAY FOR THE COST, IF ANY, FOR SUCH INTEREST-BEARING ACCOUNT.

(c) Application of Deposit. If the leasing of the Property as contemplated hereunder is consummated, the Deposit shall be held by Escrow Agent and credited against the Purchase Price. If the leasing of the Property as contemplated hereunder is not consummated solely for any reason other than (i) the City's material breach of this Agreement, (ii) Buyer's disapproval of the results of its Due Diligence Investigation and lack of cure by the City pursuant to Section 3.7, or (iii) failure of any other express condition for the benefit of Buyer described in Section 6.1, including specifically the closing of the New Financing as defined in Section 5.14 for the transactions contemplated by this Agreement, the Deposit, plus any accrued interest thereon, shall be paid to and retained by the City as consideration for the City's commitment to sell the Property to Buyer during the pendency of this Agreement and/or as liquidated damages pursuant to Section 8.2(c). If the leasing of the Property as contemplated hereunder is not consummated and this Agreement is terminated due to the City's material breach of this Agreement, Buyer's disapproval of the results of its Due Diligence Investigation pursuant to Section 3.7, or failure of any other express condition precedent for the benefit of Buyer described in Section 6.1, including specifically the closing of the closing of the New Financing, the Deposit, plus any accrued interest thereon, if any, shall be returned to Buyer, less escrow fees, if any, as may be chargeable to Buyer.

(d) Cash at Closing. Provided that this Agreement has not been terminated and all closing conditions have been satisfied as provided hereunder, including the conditions set forth in Section 6.1, Buyer will pay to Escrow Agent (or cause to be deposited into escrow), in time for Closing on the Closing Date in conformity with the requirements of Hawai'i law and escrow practice, the full remaining balance of the Purchase Price, plus Buyer's share of closing costs and closing adjustments and prorations as estimated by Escrow Agent, subject to appropriate and final closing prorations and adjustments as provided under this Agreement. Escrow Agent is irrevocably instructed to pay the Purchase Price to the City at Closing, less the City's share of closing costs and closing adjustments and prorations as estimated by Escrow Agent, after all conditions to Closing have been satisfied. Buyer has disclosed to the City that the closing by Buyer of the transactions contemplated by this Agreement will be financed by, and are subject to and contingent upon, in addition to other conditions: (i) authorization and issuance by the State of Hawai'i, through the Hawai'i Housing Finance and Development Corporation ("**HHFDC**"), of not less than \$95,000,000 in multi-family revenue bonds relating to



Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and, if Buyer elects and if permitted by applicable law, the Public Parking Component and the Resident Parking Component) of the Projects; (ii) the sale of such tax-exempt bonds; (iii) allocation by HHFDC of Federal low-income housing tax credits ("**Federal LIHTC**") of not less than \$5,891,142 annually for the 10-year credit period contemplated by Section 42 of the Internal Revenue Code of 1986 (26 U.S.C.), as amended (the "**Code**"); (iv) the allocation by HHFDC of not less than \$2,945,571 annually for the 10-year credit period of State of Hawai'i low-income housing tax credits under the cognate provisions of Hawai'i State law ("**State LIHTC**"); (v) the sale or syndication of such low-income housing tax credits to investors; and (vi) Buyer's receipt of commercial loans from banks and other financial institutions.

(e) Form of Payments. All payments required to be made by Buyer under this Agreement shall be in U.S. Dollars in the form of cash, cashier's check or by federal wire transfer (same day funds).

### SECTION 3 DUE DILIGENCE

#### 3.1 Due Diligence Period; Due Diligence Investigation.

(a) Due Diligence Period. The "**Due Diligence Period**" shall mean the period beginning on the date of the issuance of a "**Notice to Proceed**" (as referenced in Section I, Paragraph 21 of the RFP) and continuing to and ending at 4:00 p.m. Hawai'i Time on the date that is sixty (60) days from and after the date on which the Notice to Proceed is issued. The Notice to Proceed will be issued by the City upon execution of this Agreement by the City and Buyer. The date the Notice to Proceed is issued is hereafter called the "**Due Diligence Commencement Date**".

(b) Due Diligence Investigation. Prior to the Due Diligence Commencement Date, Buyer acknowledges having had the opportunity to review various documents and information relating to the Property. Buyer may conduct further investigation of the Property during the Due Diligence Period. Prior to the expiration of the Due Diligence Period, subject in all events to and in accordance with the terms of this Agreement, Buyer shall complete at its sole cost and expense all such necessary due diligence with respect to the Property in order to determine whether Buyer has any objections to any conditions, circumstances, contingencies, facts, physical conditions, financial or operating results, or other matters relating to the Property. This investigation (the "**Due Diligence Investigation**") may include (but shall not be limited to):

(i) a physical inspection of the Property, including, but not limited to, inspection and examination of soils, environmental factors, hazardous substances, if any, and archeological information relating to the Property; geological and other tests; review and investigation of any permits; and review of engineering data (including, but not limited to, engineering evaluations of the Improvements);

(ii) review of all governmental matters affecting the Property and each Project;

(iii) review of title to the Property and each Project;

(iv) review of the financial and operating results for each of the Projects, specifically including rents and other revenue sources;

(v) review of the management practices for each of the Projects, including interviews with the property manager of each Project and the operator of any parking facilities at any of the Projects, all subject to Section 3.3 below, and inspection of such property manager's and operators' books and records relating to such Project or such parking facilities;

(vi) development of a strategy for timely satisfaction of all of the requirements of this Agreement, in the event that Buyer does not elect to terminate this Agreement pursuant to the terms of Section 3.7, below; and

(vii) Any matter whatsoever not referenced above that pertains to the Property or any of the Projects.

**3.2 Delivery of Documents.** In connection with the issuance of the Notice to Proceed, and on the Due Diligence Commencement Date, the City shall deliver to or make available for review by Buyer via the Internet or at the City's offices (during normal business hours and upon reasonable notice) copies of all material documents in the City's possession relating to the City's ownership and operations of the Property and each of the Projects, respectively, including (if any) site plans, surveys, title policies, existing entitlements, approvals, soils reports, engineering reports, operating statements, licenses, permits, environmental reports, engineering or architectural renderings, plans and specifications, tenant information, maintenance records, inspection and physical condition reports, documents and materials relating to legal proceedings, governmental notices, appraisals or valuation reports, tax returns and records, and other items reasonably relevant to Buyer's Due Diligence Investigation (collectively, the "**Due Diligence Documents**"). The City's obligation to provide Due Diligence Documents shall be limited to those documents that are in the City's possession as an owner and operator of the Property and not as a governing and regulatory body. Except as provided in Section 10.2 of this Agreement, the City makes no representation or warranty relating to the accuracy or validity of the Due Diligence Documents, and Buyer acknowledges and agrees that Buyer is responsible for verifying the accuracy of the Due Diligence Documents. All information supplied by the City to Buyer pursuant to this Agreement shall remain the property of the City. In the event Closing does not occur or this Agreement is terminated for any reason, Buyer shall promptly return to the City or confirm to the City that Buyer has destroyed all Due Diligence Documents obtained from the City. The City discloses to Buyer that some of the Property may contain asbestos, PCBs and lead paint, or may have been used for many years for agricultural purposes employing pesticides, herbicides, fertilizers, combustible fuels and other chemicals. Nevertheless, Buyer shall satisfy itself on issues related to the presence or absence of hazardous materials on or under the Property.

### **3.3 Access and Conditions.**

(a) Access to Property. In order for Buyer to conduct its Due Diligence Investigation, the City hereby grants to Buyer and its representatives the right of access to the Property and each of the Projects during normal business hours and upon reasonable advance notice. Such access shall be coordinated through the City's authorized representative, Christopher Terry (Telephone Number: (808) 768-3887), and the City may require all such access to be supervised by persons appointed by the City's authorized representative. The City

shall use commercially reasonable efforts to provide Buyer with access to the Property and each of the Projects within two (2) Business Days of receiving a request for such access from Buyer.

(b) No Construction Activity. In no event shall Buyer be permitted to conduct any construction, demolition or similar work ("**Construction Activity**") during the term of this Agreement, it being the understanding of the parties that Construction Activity shall occur only after the Closing, and then in accordance with the terms and conditions of the respective Lease or Leases applicable to such Project and the Project Use Component thereof.

(c) Access Conditions. Buyer's right of entry shall be subject to the following conditions:

(i) The Due Diligence Investigation shall be conducted in full compliance with each applicable law, zoning restriction, ordinance, rule, regulation or requirement of any federal, state, county or other governmental or quasi-governmental agency with jurisdiction over the Property (collectively, "**Governmental Authorities**").

(ii) Buyer shall not interfere with any tenant's or other occupant's use and enjoyment of the Property and shall make every reasonable effort to accommodate the requests of the City and any tenants and occupants regarding conduct of the Due Diligence Investigation so as to minimize interference with operations at the Property including reasonable notice before conducting the Due Diligence Investigation. With the exception of incidental conversations that may occur during any on-site visits to any of the Projects by Buyer's directors, officers, partners, members, employees, contractors and agents, Buyer shall not conduct any interviews or discussions with the tenants or occupants of the Property without giving written notice (including by electronic mail) one (1) Business Day in advance of any such interview or discussions to the City's authorized representative, Christopher Terry (telephone number above) and offering the City the opportunity to have a representative of the City present. Interviews with the City's employees or contractors shall be limited to specifically designated senior personnel and the City shall provide to Buyer, along with the Due Diligence Documents on the Due Diligence Commencement Date, the names and contact information (telephone number, e-mail address, office address) of both the property manager for each Project and the specifically designated senior personnel of the City whom Buyer may contact concerning the Projects (and such contact information shall be supplemented as appropriate upon request of Buyer).

(iii) Prior to entering the Property to perform any of its Due Diligence Investigation, Buyer shall provide to the City a certificate of insurance showing that Buyer maintains in full force and effect a policy of commercial general liability insurance (A) covering the activities of Buyer (including Buyer's employees, contractors and agents) in connection with the Due Diligence Investigation, (B) in an amount of not less than Two Million And No/100 Dollars (\$2,000,000) combined single limit per occurrence from a carrier reasonably acceptable to the City, (C) naming the City, its officers and directors as additional insureds, and (D) requiring at least thirty (30) days written notice to the City prior to cancellation or reduction in coverage.

(iv) Any investigation involving soil borings, subsoil, soil vapor, ground water, soil load-bearing tests or other tests involving physical invasion of the surface of the

Property or physical sampling are to be made by Buyer only after obtaining the express written consent of the City, which may be withheld in the City's reasonable discretion. The City's environmental consultant may attend any test or investigation at the Property and shall be entitled, without cost, to duplicates of any samples taken by Buyer (or, if duplicates are not reasonably attainable, Buyer may elect to deliver the actual samples after testing) and to copies of all written reports and data prepared by or on behalf of Buyer. Any request for consent must be delivered to the City and its environmental consultant, together with a reasonably detailed investigation plan sufficient for the City to determine the scope and logistics of the proposed investigation, at least five (5) Business Days before the desired test. Any invasive sampling or testing permitted by the City shall be performed in compliance with all environmental laws and other requirements of any Governmental Authorities. Depending on the nature of the invasive testing or sampling, the City may require a reasonable increase in the amount of insurance specified in Section 3.3(c)(iii) above consistent with the nature of such testing or sampling. Buyer bears sole liability for any damage that may occur during such tests; provided, however, that Buyer shall not be liable for any damages incurred by the City resulting from the mere discovery by Buyer of a pre-existing condition at or with regard to the Property or any part thereof or any Project, except if Buyer negligently aggravates such condition or causes a release of any hazardous materials. If in the course of its investigation, Buyer discovers any environmental condition that Buyer or its consultants or contractors believes should be reported to any Governmental Authorities, Buyer shall provide to the City full information regarding the discovery and the City shall assume any and all reporting obligations and shall indemnify and hold Buyer harmless with respect to any failure to properly report such information to any such Governmental Authorities, if such reporting is required under applicable laws.

(v) Promptly after any physical inspection of the Property, Buyer at its sole cost, shall restore the Property to the condition that existed immediately prior to such inspection.

(vi) Buyer shall give the City (A) copies of all of Buyer's written communications to or from Governmental Authorities (including City agencies and departments acting in their regulating or planning functions), and (B) at least two (2) Business Days prior notice of any meetings with Governmental Authorities regarding any physical inspections of the Property, so that the City may participate if it desires. Buyer shall not enter into any binding agreements with Governmental Authorities regarding the physical or environmental condition of the Property prior to the Closing.

(vii) Buyer shall not permit any mechanics' or other liens, charges, encumbrances, attachments or judgments (collectively, "**Liens**") to be filed against the Property as a result of Buyer's Due Diligence Investigation, and Buyer, within five (5) Business Days after receiving written notice from the City of the filing of any such Liens, shall, at Buyer's sole cost, cause any Liens so filed to be removed by payment, deposit, bond or other reasonably satisfactory alternative approved by the City. If Buyer fails to do so, the City may pay the amount necessary to remove such Lien, without being responsible for investigating the validity thereof. The amount so paid shall be reimbursed by Buyer to the City within ten (10) Business Days after receipt of written demand therefor, without limiting any other remedies available to the City under this Agreement arising from Buyer's breach of this subsection, and any such reimbursement shall not limit remedies available to Buyer regarding the validity of any such Lien.

**3.4 Title.** Within ten (10) days following the Due Diligence Commencement Date, the City shall obtain and deliver to Buyer updated preliminary title reports (the “**Updated Title Reports**”) for all of the Projects issued by Title Guaranty of Hawaii, Inc. (the “**Title Company**”). Since the City has negotiated a preferred escrow and title policy rate with the Title Company and Escrow Agent for this transaction, the Title Company and Escrow Agent shall be used for title insurance and escrow services, respectively, for this transaction. Buyer acknowledges already having had the opportunity to review preliminary title reports for the Property. Buyer shall approve or disapprove of the Updated Title Reports during the thirty (30) day period after receipt of such Updated Title Reports. If Buyer disapproves any matters in the Updated Title Reports, Buyer shall either (a) terminate this Agreement by giving the City written notice of termination pursuant to Section 3.7, or (b) give the City a written notice (the “**Disapproval Notice**”) identifying the disapproved title matters that Buyer requests be removed or cured at or prior to Closing (the “**Disapproved Title Matters**”). Failure by Buyer to give timely notice of any disapproval or termination shall be deemed approval. With respect to any Disapproved Title Matters, unless the City shall notify Buyer in writing within ten (10) days after the City’s receipt of the Disapproval Notice that the City will cause the Disapproved Title Matters to be removed or cured at or prior to Closing, the City shall be deemed to have elected not to remove or cure all Disapproved Title Matters, in which case Buyer shall be deemed to have waived its disapproval of title in the event Buyer subsequently approves its Due Diligence Investigation pursuant to Section 3.7 below. Prior to and in connection with Closing, the City shall remove or cure the Disapproved Title Matters that the City notifies Buyer that City shall remove or cure in response to Buyer’s Disapproval Notice. Exceptions approved or deemed approved or accepted by Buyer pursuant to this Section 3.4 or otherwise approved or accepted by Buyer in accordance with this Agreement, real estate taxes not yet due and payable, and the standard printed exceptions set forth in the Title Policies (as defined in Section 6.1) are referred to herein as “**Permitted Exceptions**”.

**3.5 Confidentiality.** Buyer shall maintain the confidentiality of any information delivered to Buyer by the City and of any inspection of the Property conducted by Buyer. Buyer shall use all such information solely for the purpose of evaluating the Property. Buyer shall have the right to disclose any such information only to Buyer’s employees, consultants, prospective or actual lenders and any other persons or entities having a reasonable need to know such information in connection with the transaction contemplated by this Agreement, and provided that Buyer has specifically advised all such parties to keep such information confidential. Buyer shall be responsible for any breaches of confidentiality by persons to whom Buyer discloses information. If Buyer is confronted with, or is otherwise subject to, government compulsion, regulatory requirement, or legal action to disclose information received under this Agreement, Buyer shall promptly notify the City and shall reasonably assist the City in obtaining a protective order requiring that any portion of the information required to be disclosed be used only for the purpose for which a court issues an order, or for such other purposes as required by law, and provide for redactions of any confidential material not deemed critical to the party seeking disclosure. If this Agreement is terminated prior to any Closing, Buyer shall promptly return to the City all such confidential information received from or on behalf of the City, and shall cause all parties to whom Buyer disclosed any such confidential information to return the same to Buyer, so that such confidential information can be returned by Buyer to the City; provided, however, that upon a successful Closing, Buyer shall have the right to retain any and all such confidential or other information and use the same in connection with the proper administration and operation of the Property and each of the Projects. Notwithstanding the foregoing provisions of this Section 3.5, any information delivered to Buyer by the City shall not

be deemed to be confidential if such information: (a) was known to Buyer prior to receipt of such information from the City, and such information was obtained on a non-confidential basis; (b) is or becomes generally known to the public through means other than the disclosure of such information by Buyer, or its employees, agents, or other representatives; or (c) becomes available to Buyer on a non-confidential basis from a person other than the City or its consultants and who, to Buyer's best knowledge, is not otherwise bound by a confidentiality agreement with the City or any of the City's attorneys or consultants with respect to the Property, or is not otherwise prohibited from transmitting the information to Buyer.

**3.6 Indemnity.** Buyer hereby agrees to indemnify, defend and hold the City, its officers, directors, employees, legal counsel, agents, contractors, successors and assigns (collectively, the "**City Parties**") harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees, reasonable costs of defense, and reasonable costs and expenses of all experts and consultants), arising directly or indirectly, in whole or in part, out of Buyer's Due Diligence Investigation or Buyer's access to or activities on the Property during the term of this Agreement, including but not limited to: (a) any investigative or construction-related activity, storage of equipment or materials, any damage to the Property arising out of Buyer's activities in connection with this Agreement, any Liens caused or permitted by Buyer, or any other act or omission in connection with the Property by or on behalf of Buyer or its employees, agents or contractors (collectively, "**Buyer's Agents**"); (b) any contract, agreement or commitment entered into or made by Buyer or Buyer's Agents in connection with the Property; and (c) any act or omission of Buyer or Buyer's Agents that results in the discharge of any hazardous materials or substances on to the Property or on to any surrounding property, or the exacerbation of any pre-existing environmental condition on the Property in connection with Buyer's Due Diligence Investigation.

**3.7 Approval/Disapproval of Due Diligence Investigation; Opportunity to Cure Objections; Right to Terminate.** Buyer shall approve or disapprove the results of its Due Diligence Investigation by written notice delivered to the City no later than the expiration of the Due Diligence Period. Buyer's approval or disapproval of the results of Buyer's Due Diligence Investigation shall be in Buyer's sole and absolute discretion. In the event Buyer disapproves the results of its Due Diligence Investigation, Buyer shall include in its written notice a written description of the objectionable conditions which form the basis for Buyer's disapproval (the "**Objection Notice**"). Upon receipt of the Objection Notice, the City shall have ninety (90) days (the "**City Cure Period**") after receipt of the Objection Notice to cure the conditions described in the Objection Notice or the City may choose to cancel this Agreement without penalty or compensation to Buyer. If the City does not cure such conditions within the City Cure Period, then Buyer shall have until and including the fifth Business Day after the City Cure Period either: (a) to elect to terminate this Agreement by delivering to the City a written notice of termination describing the objectionable conditions that were not cured; or (b) to elect to waive the objectionable conditions by delivering to the City written notice of Buyer's intention to waive the objectionable conditions and proceed with Closing, in which event Buyer shall then be required in accordance with Section 2.2(b) to make the Second Deposit within two (2) Business Days after Buyer's approval of the Property. Wherever and whenever used in this Agreement, references to "Buyer's approval of the Property," or "Buyer's approval or deemed approval of the Property," or "Buyer's approval or deemed approval of Buyer's Due Diligence Investigations," or "Buyer's completion of Buyer's Due Diligence Investigations," and variants thereof and phrases

of the same import, shall mean and refer to the Buyer's approval or deemed approval of the Property after the expiration of the Due Diligence Period, the delivery to the City of any Objection Notice, the City Cure Period, and the five-Business Day period thereafter in which Buyer may elect to terminate this Agreement or waive any objectionable conditions and proceed with Closing in accordance with this Section 3.7. Upon termination of this Agreement by Buyer or the City pursuant to this Section 3.7, the parties shall instruct Escrow Agent to return the Initial Deposit (plus any interest earned thereon) to Buyer less Escrow Agent's charges and title cancellation charges, if any, chargeable to Buyer as soon as practicable and, except as otherwise provided herein, this Agreement shall be null and void and of no further force and effect, and the parties shall have no further rights, obligations or liabilities hereunder. Buyer shall not be entitled to any compensation or other payment whatsoever by the City on account of termination pursuant to this Section 3.7 or for any undertakings or due diligence costs made or incurred by Buyer under or in connection with this Agreement, or in connection with the preparation of Buyer's Initial Proposal dated April 27, 2012 ("**Buyer's Initial Proposal**") and Buyer's Best and Final Offer, dated May 22, 2012 ("**Buyer's Best and Final Offer**"). If Buyer fails to deliver to the City a notice of Buyer's approval or disapproval of the results of Buyer's Due Diligence Investigation by the end of the Due Diligence Period, Buyer shall be deemed to have approved the results of Buyer's Due Diligence Investigation and shall proceed with Closing. Since this Agreement is for the leasing of all 12 Projects, Buyer's approval of the Property or disapproval and, if applicable, termination of this Agreement shall be for all 12 Projects. Buyer cannot accept or reject less than all 12 Projects and all Leases shall be entered into simultaneously. In the event that Buyer approves or is deemed to have approved the Property as a result of Buyer's Due Diligence Investigation in accordance with this Section 3.7, the City shall not thereafter encumber the Property or any of the Projects in any respect or enter into, amend, or extend any agreements affecting title to or operation of the Property and each of the Projects (except in compliance with Section 10.2(f) or as otherwise provided in this Agreement). Notwithstanding the foregoing, Buyer understands that from the date of Buyer's approval or deemed approval of the Property until the date of Closing, the City will need to continue to operate the Property in its normal course of business and that, as provided in Section 10.2(f), the City shall be allowed to continue to operate the Property and the Projects. In addition, as disclosed in Section 5, the City is in the process of obtaining releases from the HUD Mortgages, granting an easement to an adjacent property owner, and obtaining an interest in an alleyway.

3.8 [Reserved.]

3.9 **Survival.** Buyer's obligations under Section 3.2, Section 3.3(b), Section 3.3(c), Section 3.5, and Section 3.6 shall survive the Closing or the termination of this Agreement prior to Closing.

#### SECTION 4 "AS-IS" CONDITION

4.1 **"AS IS" and "WHERE IS" Condition.** Prior to Closing, Buyer shall have made a thorough, independent examination of the Property and all matters relevant to Buyer's decision to enter into the Leases and make the capital improvements thereto contemplated by Section 5.1. This Agreement and the City's agreement to enter into the Leases are made "**AS IS**" with all faults, and Buyer expressly acknowledges and agrees that, except as provided in this Agreement, the CITY MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING

WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE CONDUCT OF BUYER'S BUSINESS OR THE PROFITABILITY OR INCOME STREAM FROM ANY OR ALL PROJECTS. Buyer acknowledges that as of Closing, Buyer will have carefully inspected the Property and by executing each Lease, will, except as otherwise provided in each Lease, accept the leased Property covered by such Lease on an "**AS IS**" and "**WHERE IS**" basis, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of the City, or any person on behalf of the City, regarding the Property or matters affecting the Property, including, without limitation:

(a) Physical Condition. The physical condition of the Property, including the quality, nature, adequacy, and physical condition of (i) the Land, including any systems, facilities, access, and/or landscaping; (ii) the air, soils, geology, and groundwater, (iii) the suitability of the Land for construction of any improvements or any activities or uses that Buyer may elect to conduct on the Land, or (iv) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the Land for building or any other purpose;

(b) Improvements. The quality, nature, adequacy, and physical condition of the existing Improvements, including but not limited to, the structural elements, seismic safety, engineering characteristics, foundation, roof, systems, infrastructure, facilities, appliances, appurtenances, access, landscaping, and/or parking facilities;

(c) Title. The nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, or other title condition affecting the Property, including without limitation the existence of any easements, rights-of-ways or other rights across, to or in other properties that might burden or benefit the Property;

(d) Compliance. The development potential of the Property and/or the zoning, land use, or other legal status of the Land or Improvements, or compliance with any public or private restrictions on the use of the Land, as the same are in effect as of the Effective Date or may be hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance with the Land or Improvements with any applicable laws;

(e) Hazardous Materials. The presence of hazardous materials on, in, under or about the Property or any adjoining or neighboring property;

(f) Economic Feasibility. Economic conditions or projections, development potential, market data, or other aspects of the economic feasibility of any Project and/or any business Buyer intends to conduct on the Property;

(g) Utilities. The availability, existence, quality, nature, adequacy and/or physical condition of utilities serving the Property;



(h) Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Property (including, without limitation, each Project) for any particular purpose;

(i) Boundaries. The boundaries of the Property, the location of any Improvements on the Land and/or the existence of any encroachments onto or from any adjacent lands;

(j) Access. Access as of the Closing Date to the Property, including from or through any particular route (provided, however, that the City agrees that the City shall take no action on or after the Closing Date that shall limit complete and total access on a permanent basis to the Property (and each of the Projects) to a public street or right-of-way for purposes of both pedestrian and vehicular ingress and egress and utilities and utility services;

(k) Parking and Parking Fees. The requirement to provide public parking at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, the number of stalls, hours of operation, the amount of parking fees that may be charged for such public parking at each such Project, and other rules and regulations governing such public parking, which may be determined by the Honolulu City Council; and

(l) Other Matters. Any matter whatsoever not referenced above that pertains to the Property.

The provisions of this Section 4.1 are not intended for the benefit of and shall not confer any rights or remedies on or release any person from any claims relating to any of the foregoing matters other than the City and persons acting on behalf of the City with regard to the Property or any of the Projects.

**4.2 Buyer's Due Diligence.** Buyer acknowledges: (a) Buyer is a sophisticated real estate investor with sufficient experience and expertise, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the Property and the risks associated with acquiring a leasehold interest in the Property; (b) Buyer will enter into the Leases with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of the Property; and (c) in connection with its investigations and inspections of the Property, Buyer will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the Property as Buyer deems to be necessary, and that Buyer will have the opportunity to review the reports of such advisors and consultants, as well as all materials and other information given or made available to Buyer by the City and by any Governmental Authorities. Buyer further acknowledges that it has not and will not receive from or on behalf of the City any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors to be retained by Buyer at its sole expense. Buyer will satisfy itself as to such suitability and other pertinent matters by Buyer's own inquiries and tests into all matters relevant in determining

whether to enter into the Leases. The City has the right to retain its own experts to dispute any findings made by those retained by Buyer.

**4.3 Release of the City.** Buyer, on behalf of itself, its directors, officers, partners, members and agents (the “**Buyer Parties**”), hereby waives, releases, acquits and forever discharges the City and the City Parties, of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer or any Buyer Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic or condition of the Property, except as otherwise set forth in the Leases, and except such release shall not include the release of any such claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation for any violation by the City or any City Parties of this Agreement or any of the Leases or any acts or omissions of the City or City Parties after Closing except as may be provided in the Leases. The provisions of this Section 4.3 shall survive the Closing.

## **SECTION 5 SPECIAL PROVISIONS**

**5.1 Capital Improvements.** Buyer shall make all capital improvements to each Project and shall create reserves as required under the Leases to ensure that each Project is properly maintained and in good condition and repair. Such improvements shall be at Buyer’s sole cost and expense. Buyer agrees that Buyer will use best efforts to expend Forty-Two Million and No/100 Dollars (\$42,000,000.00) (inclusive of hard costs, which hard costs shall not be less than Thirty-Five Million And No/100 Dollars (\$35,000,000.00), and all non-direct soft costs for architectural, engineering, financing, and legal fees, administrative and oversight costs, and other pre- and post-construction expenses and contingencies) within the first twenty-four (24) months after Closing, but in no event shall Buyer expend less than Forty Million And No/100 Dollars (\$40,000,000.00) (inclusive of hard costs, which hard costs shall not be less than Thirty-Five Million And No/100 Dollars (\$35,000,000.00), and all non-direct soft costs for architectural, engineering, financing, and legal fees, administrative and oversight costs, and other pre- and post-construction expenses and contingencies) within the first thirty-six (36) months after Closing, for capital expenditures for the Projects in which the Affordable Rental Housing Component and the Market Rental Housing Component of the Property are located (the “**Capital Improvement Amount**”). The Capital Improvement Amount shall be expended and applied in the rehabilitation of the apartments units in the Affordable Rental Housing Component and the Market Rental Housing Component and the building systems of the Projects in which such Project Use Components are located based on a capital needs assessment conducted by Buyer. The capital needs assessment shall include both the condition and working order and state of repair of all major building systems (electrical, plumbing, HVAC, roof systems, hallways, and common areas) and the condition and state of repair of the various components or facilities in each apartment (e.g., kitchen appliances, cabinets, countertops; bathroom toilet, vanities, shower and bathtub fixtures; electrical outlets and lighting fixtures throughout the apartments; plumbing fixtures; floor coverings; wall painting; entry and closet doors; window coverings; and similar components and facilities). The Capital Improvement Amount shall be apportioned among the Projects in which the Affordable Rental Housing Component and the Market Rental Housing Component are located (namely, Kulani Nani, Manoa Gardens, Westlake Apartments, West Loch Village, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects) in a fair and

appropriate manner consistent with such capital needs assessment. Notwithstanding the foregoing, the City and Buyer agree that \$450,000 of the Capital Improvement Amount shall be applied against capital improvements to the Projects in the Redevelopment Component (i.e., \$25,000.00 for Bachelors Quarters, \$400,000.00 for Pauahi Hale, and \$25,000.00 for Kanoa Apartments Projects), but the lessee of those Projects shall have until thirty-six (36) months after Closing to complete any capital improvements to such Projects or to commence the process of redeveloping those Projects (unless the City agrees to extend such 36-month period for the completion of such capital improvements, provided any extension granted by the City shall be in the City's sole and absolute discretion with no obligation to grant such extension). Unless the lessees of the Redevelopment Component can establish, to the reasonable satisfaction of the City, that such lessees have the financial capability and a reasonable financial plan to fulfill the Capital Improvement Amount for each respective Redevelopment Component, Buyer shall remain liable for such obligations herein. Buyer will use union labor, where available and appropriate, for all on-site construction labor in connection with the capital improvements to the Projects in which the Affordable Rental Housing Component and the Market Rental Housing Component of the Property are located. The obligations of this Section 5.1 shall survive the Closing.

**5.2 Relationship of This Agreement, Leases, and Regulatory Agreements.** In the event of any conflict or inconsistency with the terms and conditions of this Agreement, the Leases, and/or the Regulatory Agreements, the following documents shall be controlling in the following descending order of precedence: (a) the Lease applicable to the subject Project Use Component, (b) the Regulatory Agreements, if any, applicable to the subject Project Use Component, and (c) this Agreement.

**5.3 Extension of Closing Deadline.** The City shall have the option of extending the Closing Deadline for entering into the Leases under any one or more of the following circumstances:

- (a) Additional time is necessary to obtain HUD approval for the prepayment of the existing HUD Mortgage on Kulana Nani, as provided in Section 5.4; or
- (b) Additional time is necessary to obtain HUD approval for the prepayment of the existing HUD Mortgage on Westlake Apartments, as provided in Section 5.4; or
- (c) Additional time is necessary to redeem the CDBG investments in the Projects assisted with CDBG funds, as provided in Section 5.5 below; or
- (d) [Reserved.]
- (e) Additional time is necessary for Buyer to obtain the Bond Financing or to obtain an allocation of and/or syndicate or sell the Federal LIHTC and State LIHTC that Buyer shall require as part of its financing in connection with the acquisition of the Leases for certain Project Use Components of the Property.

The City may exercise such option multiple times with respect to the Leases provided that such extensions shall not result in an Extended Closing Deadline later than **March 31, 2014**, and provided further that any extension of the Closing Date shall require Buyer's written consent in the event that any such extension would result in (i) any increase in the applicable interest rates

at which Buyer is able to borrow funds in connection with Buyer's Bond Financing or commercial bank financing for Buyer's acquisition of the Leases for the Property, or (ii) any material change in the market price at which Buyer is able to sell or syndicate the Federal LIHTC and the State LIHTC allocated in connection with Buyer's acquisition of the Leases.

**5.4 Pay-Off of HUD Mortgages.** The Kulana Nani Project is encumbered with a mortgage under the United States Department of Housing and Urban Development ("HUD") Section 236 program for limited distribution mortgagors and the Westlake Apartments Project is encumbered with a mortgage under the HUD Section 221(d)(4) program for profit motivated mortgagors (both mortgages are collectively referred to as the "**Mortgages**"). The loan secured by the HUD Section 236 mortgage on the Kulana Nani Project is due and payable in April, 2013. The City has started the prepayment process for the Kulana Nani Mortgage by providing the 150-day notice to the Kulana Nani tenants. The loan secured by the HUD Section 221(d)(4) mortgage on the Westlake Apartments Project is due and payable in June, 2013. The City has started the prepayment process for the Westlake Apartments Mortgage by providing lender with the 30-day notice. The City and the Buyer shall make arrangements for payment or prepayment by the City of the Mortgages and release of the Mortgages and other related encumbrances from the holders thereof ("**HUD Lender(s)**") prior to or at Closing so that the Property will be free and clear and not encumbered by the Mortgages. Buyer agrees to contact and request releases of the Mortgages from the HUD Lender(s) and to deposit the fully executed and recordable releases of mortgages that are received with Escrow Agent for purposes of Closing. The City shall provide Buyer all information necessary to contact the HUD Lender(s) (both current holders of the mortgage and any loan servicers). The City shall also send any required notices to assist Buyer in obtaining payment or prepayment information for release of the Mortgages prior to or at Closing. Buyer shall provide the City with weekly status reports on its efforts to obtain the Mortgage releases. If the Closing is scheduled to occur on a Closing Date that requires prepayment of either of the Mortgages and the City and Buyer are unable to obtain any HUD Lender(s)' consent to any such prepayment, the Closing shall be extended to permit payment of the Mortgages in conformity with the terms thereof as of the dates specified above.

(a) Kulana Nani Project. In preparation for Closing, the City and Buyer shall use their best efforts to obtain HUD approval for prepayment of the Section 236 Mortgage encumbering the Kulana Nani Project and approval, if applicable, for any IRP (interest reduction payment) decoupling request that Buyer elects to make on the Kulana Nani Project. The City and Buyer shall undertake such prepayment and decoupling efforts in accordance with applicable requirements of HUD and in a manner that will cause HUD to issue Section 8 Enhanced Vouchers ("**EVs**") to the eligible residents of the Kulana Nani Project. Further, the City and Buyer shall work together and use their best efforts to assure that any EVs are exchanged by the eligible residents for Section 8 Project-Based Vouchers ("**PBVs**") in connection with the payment and release of the HUD Section 236 Mortgage on the Kulana Nani Project, but the City shall not be obligated to provide such PBVs out of the PBVs available to the City and under the City's control.

(b) Westlake Apartments Project. In preparation for Closing, the City and Buyer shall use their best efforts to obtain HUD approval of the request for prepayment of the Section 221(d)(4) Mortgage encumbering the Westlake Apartments Project and Buyer shall rely solely on its Title Policy providing that the mortgages for the New Financing (as defined below in Section 5.14) have first priority even though the Title Company may file a release of mortgage for the prior first mortgage after the prepayment proceeds are received and said release of

mortgage is filed after Closing. In connection with the prepayment of the Section 221(d)(4) Mortgage encumbering the Westlake Apartments Project, the City shall cooperate with Buyer in attempting to extend or procure from HUD or the State of Hawai'i a housing assistance payments contract ("**HAP Contract**") to provide tenant-based or project-based rental assistance for all of the apartments units in the Westlake Apartments Project under HUD's Section 8 program.

(c) Reserve Accounts. Buyer shall not receive any reserve account balances, including the Reserve for Replacement funds, and amounts, or Residual Receipts accounts, or any other cash account or escrow account held prior to Closing by the HUD Lenders or HUD Lender's designees and/or agents with respect to any of the Projects (collectively, the "**Reserve Accounts**"). The Reserve Accounts shall be the City's sole and separate property and the Reserve Accounts shall be released to the City prior to or at Closing. If, at any time after Closing, Buyer receives a cash distribution of the funds in any such Reserve Accounts, Buyer shall forthwith turn over such funds from such Reserve Accounts to the City. The obligations of this Section 5.4(c) shall survive the Closing.

**5.5 Buy Out of CDBG Investments.** The Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Kanoa Apartments, Kulana Nani Apartments, Marin Tower, Pauahi Hale, Westlake Apartments and Winston Hale Projects were developed in whole or in part with CDBG funding. The City shall "buy out" the CDBG investments in these Projects, resulting in the leasing of the Projects free from CDBG restrictions, provided that such "buy out" price does not exceed Fifty Million And No/100 Dollars (\$50,000,000.00) (the "**Buy Out Cap**"). Buyer shall work cooperatively with the City to obtain HUD approval of CDBG "buy outs" on terms that are acceptable to the City. Buyer shall not be required to execute any subrecipient or other agreements with the City or HUD regarding any CDBG grant restrictions on or compliance with CDBG regulations regarding the Projects. "Buy outs" of CDBG investments in the Projects shall be subject to notice given to affected citizens and an opportunity afforded to such citizens to comment on the proposed transactions pursuant to the Citizen Participation requirements set forth in the City's Consolidated Plan. If the "buy out" price required from HUD exceeds the Buy Out Cap, the City shall have the right to cancel and terminate this Agreement upon written notice to Buyer. If the City decides to cancel and terminate this Agreement pursuant to this Section 5.5, the City shall reimburse Buyer for Buyer's reasonable out-of-pocket expenses in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation and Buyer's preparation for Closing, in an amount not to exceed Five Hundred Thousand And No/100 Dollars (\$500,000.00) based on an itemized account of such third-party fees that Buyer shall provide to the City, and such reimbursement payment shall be Buyer's exclusive remedy for the City's termination of this Agreement pursuant to this Section 5.5.

**5.6 HOME Requirements and Affordability Expiration Dates.** Bachelors Quarters, Kanoa Apartments, and Kulana Nani Apartments (Buildings D, F and H) were developed in whole or in part with HOME funding, and West Loch Village was used by the City as a HOME match project. Each of these Projects will continue to remain subject to HOME program requirements as evidenced by a HOME Use Restriction Agreement in the form attached as Exhibit E to this Agreement, which shall be executed by the Buyer at Closing with respect to and recorded as an encumbrance against each HOME-funded Project. The dates for the expiration of the HOME program requirements and the Restrictive Covenant for each applicable Project are as follows:

Bachelors Quarters	August 30, 2014
Kanoa Apartments	March 2, 2013
Kulana Nani Apartments	July 10, 2021
West Loch Village	June 17, 2013

Buyer shall be responsible for complying with all applicable statutory and regulatory HOME Program requirements. The costs of compliance with any such HOME requirements shall be borne solely by Buyer.

## 5.7 Regulatory Agreements, Etc.

(a) Affordable Rental Housing Component; Redevelopment Component. In addition to the Leases for the Affordable Rental Housing Components and the Redevelopment Component of the Projects, each lessee under the Leases for such Project Use Components shall comply with the Regulatory Agreement and Declaration of Restrictive Covenants (the “**Regulatory Agreement**”) applicable thereto, a copy of which shall be attached to each Lease for the Affordable Rental Housing Component and the Redevelopment Component of the Projects. The Regulatory Agreement for each such Project will include, without limitation, terms relating to the renting of the units in the Project, such as rental rates and increases thereto, tenant eligibility, record keeping, reporting, operations and management.

(b) Market Rental Housing Component. The Market Rental Housing Component of the Projects shall not be subject to a regulatory or other similar agreement, but the Leases for the Market Rental Housing Components shall contain provisions restricting the use of such Market Rental Housing Components to residential rental housing and limiting increases in rents to ten percent (10%) per year during first five (5) years of the terms of the Leases for the Market Rental Housing Components of the Projects, but imposing no restrictions on increases in rents thereafter.

(c) Commercial Rental Components. The Leases for the Commercial Rental Components shall not be subject to any regulatory or other similar agreement restricting the operation thereof or the rental rates or increases in rental rates pertaining to such Project Use Components.

(d) Public Parking Component. Buyer acknowledges that the rental rates applicable to the parking stalls in the Public Parking Component shall be regulated by the City pursuant to ordinance (currently, Ordinance 12-13, amending Section 15-23.2 of the Revised Ordinances of Honolulu).

(e) Resident Parking Component. The City may require that the Resident Parking Components of the Projects shall be subject to a regulatory or other similar agreement pursuant to which increases in the rental rates for the parking stalls in the Resident Parking Component shall be limited to ten percent (10%) per year during the first 10 years of the terms of the Leases for the Resident Parking Components of the Projects, but imposing no restrictions on increases in parking rental rates thereafter. In any event, the Leases for the Resident Parking Components shall contain provisions restricting the use of such Resident Parking Components to parking and limiting increases in the rental rates for the parking stalls in the Resident Parking Component to ten percent (10%) per year during the first 10 years of the

terms of the Leases for the Resident Parking Components of the Projects, but imposing no restrictions on increases in parking rental rates thereafter.

**5.8** [Reserved.]

**5.9 Real Property Tax Exemptions; General Excise Tax Exemptions.**

(a) Real Property Tax Exemptions. The City is entering into Regulatory Agreements with Buyer for the Affordable Rental Housing Component and the Redevelopment Component, and based on the recordation of such Regulatory Agreements, Buyer may file an application or claim for exemption from the assessment and payment of real property taxes, including any claim for exemption subject to and pursuant to Section 8-10.20 and Section 8-10.21, Revised Ordinances of Honolulu, relating to low-income rental housing, and the City agrees to process such application in the ordinary course based upon and subject to the requirements of Section 8-10.20 and Section 8-10.21. Buyer understands that Buyer must file for such exemptions annually and that the City shall not be responsible or liable for Buyer's failure to timely file for such exemptions on an annual basis.

(b) General Excise Tax Exemption. Pursuant to Hawai'i Revised Statutes Section 46-15.1, Section 201H-36, and Section 237-29, the City may certify for exemption from general excise taxes any projects which meet the requirements of said statutes. The City will work with Buyer to issue such certifications provided that the requirements under said statutes and applicable laws are met. Buyer understands that Buyer is responsible for preparing and filing any exemption request and that the City shall not be responsible or liable for Buyer's failure to file for such exemptions. Buyer further understands that such exemptions are subject to all laws and rules applicable thereto and are subject to extinguishment if the Legislature of the State of Hawai'i amends the Hawai'i Revised Statutes to revoke such exemption.

(c) Other Exemptions. Nothing in this Agreement is intended to preclude Buyer from filing a claim or claims in accordance with applicable law for an exemption from real property tax and/or Hawai'i State General Excise Tax with respect to any of the other Project Use Components.

**5.10 Applicant Waitlists.** At or in connection with the Closing, the City or its property manager will provide applicant waiting lists for each Project. Buyer and its nominees shall preserve all wait list applicant's positions and shall process unit occupancies based on the applicable wait lists, subject in all instances to any income limitation qualifications and other restrictions, provisions, and terms contained in any document or instrument relating to the New Financing (as defined in Section 5.14) and applicable law. The obligations of this Section 5.10 shall survive the Closing.

**5.11 Chinatown Manor Survey.** The State has granted to the City a right-of-way for Chinatown Manor to use the alleyway shown on that certain ALTA/ACSM Land Title Survey "Chinatown Manor" dated May 21, 2012, prepared by R. M. Towill Corporation, for access purposes to and from King Street. Under the terms of the right-of-way granted by the State, it was anticipated that the City would ultimately obtain from the State a formal easement or deed to the alleyway. The City is pursuing an agreement with the State to acquire such easement or deed for the alleyway. The City hereby reserves the right and authority to continue to pursue such easement or deed both before and after Closing, provided that the City shall be

responsible and liable for all costs and fees in connection therewith, including, but not limited to, the payment of consideration for such acquisition, the City's attorneys' fees and costs, and recordation fees related thereto. If the City obtains the fee interest or an easement in the alleyway prior to Closing, such alleyway property shall be included as part of the Premises leased under the Leases applicable to the Chinatown Manor Project and all obligations of lessee under said Lease shall also apply to the alleyway. If the City does not obtain the fee interest or an easement in the alleyway prior to Closing, the City shall assign and transfer, as part of the Leases relating to the Chinatown Manor Project, all rights and interests of the City under the right-of-way agreement with the State for the term of the Leases and Buyer shall fully cooperate with the City thereafter in obtaining such easement or deed for the alleyway. In the event that the City acquires the fee interest or an easement in the alleyway after Closing, the City and Buyer agree (and Buyer shall cause any designee of Buyer as the lessees of the Chinatown Manor Project to agree) to amend said Leases of the Chinatown Manor Project to include such interest in the alleyway. The provisions of this Section 5.11 shall survive the Closing.

**5.12 Marin Tower Easement.** The City has agreed to grant to Pacific Gateway Center, a Hawai'i nonprofit corporation, an access easement over the Marin Tower Project for fire escape purposes. Pacific Gateway Center owns that certain adjacent property located at 83 North King Street, Honolulu, Hawai'i, and identified as TMK (1) 1-7-002-008. As part of the Due Diligence Documents that the City shall provide to Buyer pursuant to Section 3.2, the City shall provide to Buyer copies of all correspondence, plans, surveys, specifications, and other documents, if any, in the City's possession, relating to such contemplated access easement in favor of Pacific Gateway Center, and the same shall be subject to review and approval by Buyer as part of Buyer's Due Diligence Investigation. The grant of easement document contemplated herein shall be subject to Buyer's consent, which consent shall not be unreasonably withheld, delayed or conditioned. If Closing occurs prior to the City's grant of easement over the Marin Tower Project to Pacific Gateway Center, the City reserves the right and power to grant said easement pursuant to Section 1.4, in substantial conformity with the information concerning such easement provided to Buyer as part of the Due Diligence Documents, and subject to the terms thereof, and in such event, the City and Buyer agree (and Buyer shall cause any designee of Buyer as the lessees of the Marin Tower Project to agree) to amend said Leases of the Marin Tower Project to include and be subject to such easement. The provisions of this Section 5.12 shall survive the Closing.

**5.13 West Loch.** Currently, West Loch Village is not assessed for the cost of the non-potable irrigation water used to irrigate the landscaping at the West Loch Village Project. The Board of Water Supply delivers the non-potable water to the City's West Loch Golf Course and the cost of the non-potable water is paid for by the City department overseeing the City's golf courses. Various users, including the West Loch Golf Course and West Loch Village, use the non-potable water. The City is working on allocating the costs of such non-potable water and the costs for the installation, maintenance and repair of infrastructure and waterlines to all users in a fair and reasonable and proportionate manner. As part of the Due Diligence Documents that the City shall provide to Buyer pursuant to Section 3.2, the City shall provide to Buyer, if available, an estimate of all costs for such non-potable water that may be chargeable to Buyer after Closing relating to the West Loch Village Project and any costs for installation, maintenance and repair of infrastructure and waterlines that may be allocable to Buyer. In the event that Buyer approves the Property pursuant to Section 3.7 as a result of Buyer's Due Diligence Investigation, Buyer (or its designee) shall be responsible for the West Loch Village



Project's proportionate and allocated share of such costs based on a reasonable determination by the City, as the same may be reasonably adjusted from time to time. The provisions of this Section 5.13 shall survive the Closing.

**5.14 Financing (Bond Financing and Tax Credits).** Buyer's agreement to pay the Purchase Price and enter into the Leases is based, contingent, and conditioned upon closing of the following three (3) different sources of financing that Buyer intends to procure for the different Project Use Components (collectively, the "**New Financing**").

(a) Bond Financing; City's Agreement Respecting Transfer of "Bond Volume Cap". The New Financing shall include, in addition to possible sources of financing from banks and other financial institutions relating to the Market Rental Housing Component and the Commercial Rental Component, not less than \$95,000,000 in the form of one or more loans, to be made on terms and conditions that shall be subject to Buyer's approval, funded through the sale of tax-exempt bonds that Buyer intends to request be allocated and issued by the HHFDC under its Hula Mae Multi-Family Revenue Bond Program in connection with Buyer's acquisition of the Leases for the Affordable Rental Housing Component of the Projects and the rehabilitation thereof as contemplated by Section 5.1 of this Agreement ("**Bond Financing**"). If permitted by applicable law, and if Buyer elects, it is Buyer's intention that the Bond Financing may also provide financing for Buyer's acquisition of the Leases for the Public Parking Components and the Resident Parking Components of the Projects. To facilitate such Bond Financing, the City agrees that the City shall take all appropriate action to return or transfer to the State and the HHFDC not less than \$95,000,000 in current year (2012) bond authority (sometimes referred to as "bond volume cap") for purposes of the allocation thereof to Buyer in connection with Buyer's financing and acquisition of the Leases for the Affordable Rental Housing Component of the Projects and any other applicable Project Use Components and the rehabilitation thereof. For certain federal tax reasons, Buyer may, in Buyer's discretion, elect to segregate and denominate a certain amount of the Bond Financing to consist of taxable, as opposed to tax-exempt, bonds.

(b) Tax Credit Equity. In addition to the Bond Financing, Buyer intends to request that the HHFDC reserve and allocate to Buyer in connection with Buyer's acquisition of the Leases for the Affordable Rental Housing Components of the Projects (and the rehabilitation thereof) Federal LIHTC in an amount not less than \$5,891,142 annually for the 10-year credit period contemplated by Section 42 of the Code, and not less than \$2,945,571 in State LIHTC under the cognate provisions of Hawaii State law. Buyer intends to raise substantial equity for the acquisition of the Leases for the Affordable Rental Housing Components of the Projects through the sale or syndication of the Federal LIHTC and the State LIHTC, provided that the Federal LIHTC and State LIHTC may be sold or syndicated on terms and conditions acceptable to Buyer. It is Buyer's intention that the sale or syndication of the Federal LIHTC and the State LIHTC may also, if Buyer elects and to the extent permitted by applicable law, provide equity financing for Buyer's acquisition of the Leases for the Public Parking Components and Resident Parking Components of the Projects.

(c) [INTENTIONALLY OMITTED]

(d) Commercial Bank Financing For Market Rental Housing Component and Commercial Rental Component; Etc. Buyer intends to finance acquisition of the Leases for the Market Rental Component and the Commercial Rental Component by means of commercial

loans from banks and other financial institutions. In the event that Buyer does not elect to finance the acquisition of the Leases for the Public Parking Component and/or the Residential Parking Component (or any part thereof) as part of and together with the Bond Financing and/or equity financing from the sale or syndication of the Federal LIHTC and the State LIHTC, or if such financing relating to the Public Parking Component or the Residential Parking Component (or any part thereof) is not permitted by applicable law as part of the Bond Financing and/or the Federal LIHTC or State LIHTC equity financing, Buyer intends to finance the acquisition of the Leases for these Project Use Components (or the applicable part thereof) by means of commercial loans or other financing facilities.

(e) References to "Buyer's Lenders". For purposes of this Agreement, references to "**Buyer's Lenders**" shall be understood to mean any and all governmental agencies, including the HHFDC, banks, financial institutions, HUD, and the Federal Housing Administration ("**FHA**") and other persons authorizing, issuing, or providing any part of Buyer's New Financing relating to the acquisition of the Leases, including without limitation any persons or entities involved in the sale or syndication or the purchase of the Federal LIHTC and State LIHTC that the HHFDC reserves and allocates to Buyer in connection with Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component if financed together with the Affordable Rental Housing Component).

(f) Financing Contingencies; Financing Contingency Date. Buyer's obligations under this Agreement shall be contingent upon Buyer obtaining written documentation in form and substance of commitments satisfactory to Buyer for all components of the New Financing (hereafter called, collectively, the "**Financing Contingencies**"), by April 1, 2013 (the "**Financing Contingency Date**"). Buyer agrees to use commercially reasonable efforts to obtain the New Financing by the Financing Contingency Date. In the event the Financing Contingencies are not satisfied by the Financing Contingency Date, Buyer shall be entitled to extend the Financing Contingency Date until June 28, 2013 ("**Extended Financing Contingency Date**"). If the Financing Contingencies are not satisfied by the Extended Financing Contingency Date, Buyer may request the City's consent to a further extension for Buyer to satisfy the Financing Contingencies; provided, however, the City shall have no obligation to approve such extension. In the event the City does approve such extension, which approval must be in writing, the City and Buyer shall execute an amendment evidencing such further extension of the Financing Contingency Date and the projected extension period. If the City does not approve such further extension and the Financing Contingencies have not been satisfied by the Extended Financing Contingency Date, then this Agreement shall terminate and be of no further force or effect, and Escrow Agent shall forthwith return the Deposit plus all earned interest, if any, to Buyer less escrow fees, if any, chargeable to Buyer. The New Financing and the Financing Contingencies shall consist of the three (3) sources of financing listed in Subsections 5.14(a), (b), and (d), and although Buyer may apply for and/or use the HHFDC's Rental Assistance Revolving Fund Program, the HHFDC's Rental Housing Trust Fund Program, and equity contributions from the owners, partners, and/or members of Buyer, such other sources of funding are not "New Financing" as defined in this Agreement and are not included as Financing Contingencies.

**5.15 Tenant Services.** As set forth in Buyer's Best and Final Offer, Buyer has represented that it will target appropriate services that will support the residential communities at the Projects. In furtherance thereof, Buyer agrees that at the commencement of each Lease

for the Affordable Rental Housing Component at the Projects, Buyer shall conduct an evaluation of appropriate services to be offered to support the residential community at each Project. Residential tenant services to be evaluated include, but are not limited to, those services listed in Schedule 2 of the Regulatory Agreements. The evaluation shall solicit feedback from onsite management and residents. Buyer shall provide or facilitate provision of tenant services appropriate to the needs of the Project's resident profile. Any fees for such services shall be reasonable. Buyer shall provide annual reports to the City on the services provided at each Project and the charges, if any, for such services, as set forth in the Regulatory Agreements applicable to the Affordable Rental Housing Components of the Projects. From and after the Closing, Buyer shall have extensive oversight and supervision of the Projects and shall remain actively involved with the residents of the Affordable Rental Housing Components of the Projects, including establishing an active schedule of site visits and inspections as well as remaining accessible and responsive to residents' concerns and questions. The provisions of this Section 5.15 shall survive the Closing.

**5.16 Blind or Visually Handicapped Persons.** If there is any judicial determination, a binding arbitration determination, or a determination made as part of a judicially-approved settlement that any of the Projects are subject to Hawai'i Revised Statutes §102-14, and Buyer is required as a result thereof to grant any concessions or rights to operate vending machines in any part of the Projects, the City shall indemnify and hold harmless Buyer from and against (i) the loss of any and all revenues (including revenues over the remaining terms of the Leases) that would have otherwise been realized by Buyer, and (ii) any liability, cost, damage, and expense (including, without limitation, attorneys' fees and costs) that Buyer incurs in connection with any claims made against Buyer or any proceedings under Hawai'i Revised Statutes §102-14 to which Buyer is made a party. The provisions of this Section 5.16 shall survive the Closing.

**5.17 City's Agreement Respecting "Condominiumization" of Certain Projects.**

(a) Certain Projects to Be Submitted to Condominium Property Regime. As set forth in this Agreement, Buyer intends to finance its acquisition of the Leases by obtaining different types and sources of financing (e.g., the Bond Financing described in this Agreement, equity from the sale or syndication of Federal LIHTC and State LIHTC, commercial loans from banks and other financial institutions, loans from the HHFDC, and grants) for each of the respective Project Use Components (although Buyer may finance its acquisition of the Leases for the Public Parking Component and the Resident Parking Component as part of Buyer's financing for Buyer's acquisition of the Leases for the Affordable Rental Housing Component). Buyer has advised the City in this regard that it is necessary for purposes of Buyer's contemplated financing that certain of the Projects (namely, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale), which contain more than one and different Project Use Components, must each be submitted to a condominium property regime in conformity with Chapter 514B of the Hawai'i Revised Statutes, so that each of the different Project Use Components thereof will constitute a "separate parcel of real estate" under Section 514B-4(a) of the Hawai'i Revised Statutes and may be both separately leased to one of the subsidiary entities that Buyer intends to form to acquire the Leases for the different Project Use Components of Projects and separately financed. Upon completion of Buyer's Due Diligence Investigation and approval of the Property in conformity with Section 3.7, the City agrees to join Buyer in filing a declaration of condominium property regime and such other documents as are necessary and appropriate, subject to the City's reasonable review and

approval of such documents (taking into account the importance of such condominiumization of the subject Projects to the various components of Buyer's New Financing), to submit each such Project to a condominium property regime in conformity with Chapter 514B of the Hawai'i Revised Statutes so that the Affordable Rental Housing Component, the Market Rental Housing Component, the Commercial Rental Component, the Public Parking Component, the Resident Parking Component, and the Redevelopment Component thereof, as the case may be in the case of each such Project, will constitute a separate parcel of real estate and can be separately leased by the City to one or the other of Buyer's subsidiary entities and separately financed accordingly. After the completion of Buyer's Due Diligence Investigation, Buyer shall submit for the City's review and approval all condominium documents and maps, proposed State Public Reports and other required instruments in connection with the creation of the condominiums and submission of each of the subject Projects to a condominium property regime.

(b) Buyer's Responsibilities Regarding Preparation of Declaration and Other Condominium Documents; Costs of Condominium Filings. Buyer shall be solely responsible for all legal fees and other costs and expenses in connection with preparation of all declarations, maps, and reports required to submit of each the Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects to separate condominium property regimes under Chapter 514B and Buyer shall pay for all of the City's legal and third-party fees in connection with the City's review, approval and execution of all of the documents in connection with the submittal of the applicable Projects to condominium property regimes, in an amount not to exceed Twenty-Five Thousand And No/100 Dollars (\$25,000.00), based on an itemized account of such third-party fees that the City shall provide to Buyer. In connection with the creation of each such condominium property regime, Buyer shall act as and be deemed to be the "developer" for purposes of Chapter 514B. Subject to the City's reasonable consent and approval, Buyer shall determine the number, location, and configuration of the condominium units in each Project, the common elements and limited common elements of the condominium regimes, the interest in common elements and the limited common elements appurtenant to each unit, and all other matters relating to the creation of such condominium property regimes.

In connection with the condominiumization of the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, and because of the income limitation qualifications that will apply to residents of apartment units in the Affordable Rental Housing Component in those Projects as a result of Buyer's New Financing and the Regulatory Agreement between the City and Buyer relating to apartment units in the Affordable Rental Housing Component, the City acknowledges that Buyer will need the ability, and therefore, to the full extent permitted by the law and by the terms of a resident's rental agreement, shall have the right after Closing to relocate current residents in those Projects in accordance with such residents' household income and the applicable income limitation qualifications for apartment units in the Affordable Rental Housing Component. More specifically, Buyer shall have the right after Closing: (i) to relocate current residents who occupy apartment units that are included in the Affordable Rental Housing Component, but whose household income exceeds the applicable income limitation qualifications for apartment units in the Affordable Rental Housing Component, to comparable apartment units in the Market Rental Housing Component; and (ii) conversely, to relocate current residents of apartment units in the Market Rental Housing Component whose household income does not exceed the applicable income qualification limitations to comparable apartment units in the Affordable Rental Housing Components. Buyer shall defend, indemnify and hold the City Parties harmless from any and all demands, losses, claims, damages, liabilities, charges, administrative and judicial proceedings and orders, judgments and all costs and expenses

incurred in connection with Buyer's relocation of tenants pursuant to this Section 5.17(b).

(c) City's Cooperation. In addition to joining Buyer in executing and filing a declaration to submit each of the Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects to a condominium property regime, the City agrees to make available to Buyer all building plans, diagrams, plat maps, and other documents and information, if any, in the City's possession that would assist Buyer in preparation and filing of the declaration of condominium property regime, condominium map, public report, and the other appropriate applications, declarations, reports, and documents applicable to the creation of a condominium property regime for each such Project. The City further agrees to review and execute the declaration of condominium property regime for each Project and all such other submissions that require the City's joinder in a timely manner in order that each such declaration may be filed and a public report may be issued by the Real Estate Commission of the State of Hawai'i for each such Project prior to and as a condition of the Closing of the transactions described in this Agreement.

(d) Possible Further Condominiumization of Resident Parking Component. In connection with Buyer's financing for acquisition of the Leases for the Resident Parking Component, it may be necessary or advantageous for Buyer to create two separate condominium units with regard to the Resident Parking Component: namely, a separate condominium unit consisting of the parking spaces in the Resident Parking Component in each of the Chinatown Gateway Plaza, Harbor Village, Marin Tower Projects set aside for apartment units in the Affordable Rental Housing Component (the "**Affordable Rental Parking Component**"), and a separate condominium unit consisting of the parking spaces in the Resident Parking Component in each of the Chinatown Gateway Plaza, Harbor Village, Marin Tower Projects set aside for apartment units in the Market Rental Housing Component (the "**Market Rental Parking Component**"), in each case as determined by Buyer. In the event that Buyer elects to create separate condominium units for the Affordable Rental Parking Component and the Market Rental Parking Component at the applicable Projects, the City and Buyer shall have the same respective rights, obligations, and responsibilities in this regard as set forth Sections 5.17(b) and Section 5.17(c) relating to the condominiumization of the other Project Use Components.

(e) Manoa Gardens. The Lease for the Manoa Gardens Project will cover and lease to Buyer the entire Manoa Gardens Project, but shall be subject to that certain Lease, dated December 14, 1992, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 92-206026, between the City and Pacific Housing Assistance Corporation ("**PHAC**"), a Hawaii corporation, pursuant to which the City has previously entered into a long-term lease of the 39 units in the Manoa Gardens Project in favor of PHAC, with the result that Buyer shall acquire the leasehold interest in the remaining 41 of the 80 units in the Manoa Gardens Project free and clear of any prior lease, except for residential tenant leases. In the event that Buyer requests as a result of Buyer's Due Diligence Investigation, the City agrees, subject to approval and consent from PHAC, that the City shall also join in submitting the Manoa Gardens Project to a condominium property regime in conformity with Chapter 514B of the Hawai'i Revised Statutes so that the 41 units of the Manoa Gardens Project that shall be leased by the City to Buyer will constitute a separate parcel of real estate and can be separately leased by the City and financed as part of Buyer's financing for the Affordable Rental Housing Components of the Projects. In the event that Buyer elects to have the City submit the Manoa Gardens Project to a condominium property regime, the City and Buyer shall have, in

connection with the condominiumization of the Manoa Gardens Project, the same respective rights, obligations, and responsibilities as set forth in Section 5.17(b) and Section 5.17(c) relating to the condominiumization of the other Projects named therein..

(f) Possible Adjustments to Affordable Rental Housing Component and Market Rental Housing Component. Based on certain preliminary information provided by the City in connection with the RFP, Buyer based Buyer's Initial Proposal and Buyer's Best and Final Offer on the assumption that there will be 971 apartment units in aggregate in the Affordable Rental Housing Component and 186 apartment units in aggregate in the Market Rental Housing Component. As part of the Buyer's Due Diligence Investigation, it is anticipated that the City will provide to Buyer additional and more complete and reliable information regarding the income qualifications of the current residents of the apartment units in the various Projects. The City and Buyer acknowledge that such additional information may indicate that, of the total 971 apartment units that Buyer anticipated would comprise the apartment units in the Affordable Rental Housing Component, certain of those apartment units may be occupied by families whose household income exceeds the income limitation qualifications that would permit such apartments units to be included in and financed as part of the Bond Financing and Federal LIHTC and State LIHTC components of Buyer's New Financing. In such event, Buyer shall have the right to reduce the number of apartment units in the Affordable Rental Housing Component and to include the apartment units in question in the Market Rental Housing Component; provided, however, that the number of apartment units included in the Affordable Rental Housing Component shall not be reduced to less than 939 units.

(g) Termination of Condominium Property Regime. If, by the Extended Closing Deadline, the Projects that were submitted to a condominium property regime do not close and leases are not issued to Buyer's separate subsidiary entities as contemplated in this Agreement, upon the request of the City, Buyer shall, at its sole cost and expense, terminate the condominium property regime, file and record all necessary documents to effect such termination and return title to the Property free and clear from any and all encumbrances pertaining to the condominium property regime, and file all documents to terminate the effectiveness of any public report filed with the Hawaii Real Estate Commission. Buyer's obligations under this Section 5.17(g) shall survive the cancellation or termination of this Agreement, but Buyer shall have no obligation under this Section 5.17(g) or to terminate any condominium property regime or file or record any documents hereunder unless the City provides a request to do so within six (6) months after the earlier of the termination of this Agreement or the Extended Closing Deadline.

**5.18 City's Agreement Regarding Buyer's Lenders.** The City acknowledges that, in connection with Buyer's New Financing, Buyer's Lenders may request or require that certain specific lender protections be incorporated into the Leases and Regulatory Agreements. To the extent such lender protections are generally applicable in financings provided by Buyer's Lenders that are similar in nature to the related component of Buyer's New Financing for Buyer's acquisition of the Leases for the Project Use Component in question, the City agrees to review and reasonably approve any such requests or requirements of Buyer's Lenders and timely amend the Leases and Regulatory Agreements as necessary and appropriate, provided, however, that such requests and requirements do not materially and adversely affect the City's rights or materially increase the City's obligations.

**5.19 Manoa Gardens Access.** Access to Manoa Gardens is over and through Manoa District Park from a public road. The City is working on obtaining documentation for a right-of-access over Manoa District Park or may pursue a subdivision application creating an extension of Kahaloa Drive, a public road.

**5.20 City Assistance Respecting Rental Subsidies for Kulana Nani, West Loch Village, Pauahi Hale, Kanoa Apartments, and Bachelors Quarters Projects.** In connection with HUD's HOME program, the City's own Affordable Housing Fund program, and certain other City programs, certain apartment units in the Kulana Nani, West Loch Village, Pauahi Hale, Kanoa Apartments, and Bachelors Quarters Projects are currently set aside, respectively, for tenants whose household incomes do not exceed 50% of Area Median Income (as defined and determined by HUD). Buyer intends to request that HUD, the State of Hawai'i, and/or the City provide rental support by way of a HAP Contract with Buyer (or Buyer's Affiliate) that shall provide tenant-based or project-based rental assistance under HUD's Section 8 program for the tenants of the apartment units at such Projects set aside for tenants whose household incomes do not exceed 50% of Area Median Income. The City agrees to cooperate with and support Buyer's request or application for such rental support from HUD and/or the State of Hawaii, and the City agrees to reasonably review and fairly consider such application in connection with the City's Section 8 program, but this Section 5.20 is not intended to impose on the City a requirement or obligation to enter into a HAP Contract or to provide such tenant-based or project-based rental assistance in connection with the apartment units at the subject Projects set aside for tenants whose household incomes do not exceed 50% of Area Median Income.

**5.21 Buyer Oversight.** From and after the Closing, Buyer shall have oversight and supervision of the Projects and shall remain actively involved with the residents of the Market Rental Housing Components of the Projects, including establishing an active schedule of site visits and inspections as well as remaining accessible and responsive to such residents' concerns and questions. The provisions of this Section 5.21 shall survive the Closing.

## **SECTION 6 CONDITIONS PRECEDENT**

**6.1 Buyer's Conditions Precedent.** Buyer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.1. Except as otherwise noted, each condition is solely for the benefit of Buyer and may be waived in whole or in part by Buyer by written notice to the City.

(a) Due Diligence Investigation. Buyer shall have approved the results of its Due Diligence Investigation pursuant to Section 3.7.

(b) Title Policies. The Title Company shall deliver to Buyer at Closing leasehold title policies for each Lease of each Project Use Component leased by the City to Buyer or the subsidiary entities that Buyer intends to form to acquire such Leases (collectively, the "**Title Policies**"). The Title Policies shall be in such form (standard leasehold or American Land Title Association ("**ALTA**") extended coverage leasehold title policy) and shall include such coverage and endorsements as Buyer's Lenders shall reasonably require in connection with the New Financing provided by Buyer's Lenders. The Title Policies shall be issued by the Title



Company and underwritten by First American Title Insurance Company, as of the date and time of the recording of the Memorandum of Lease (as defined in Section 7.3(b) below) for each Lease of each Project Use Component, subject only to the Permitted Exceptions.

(c) The City's Performance. The City shall have performed all of its obligations that are to be performed by the City under this Agreement and in connection with Closing.

(d) No Litigation. Except for the matter described in Section 5.16 above, there shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Buyer or the City that would materially and adversely affect the City's or Buyer's ability to perform its obligations under this Agreement; provided, however, that, in the event of the pendency or threat of any such matter, the Buyer and the City shall each be entitled to extend the Closing Date for the Closing, subject to Section 6.3, to resolve such matter.

(e) City Council Approval of Transfer of Bond Volume Cap to State. The Honolulu City Council shall approve the return or transfer to the State and the HHFDC of the City's private activity bond allocation for calendar year 2012 in an amount not less than Ninety-Five Million And No/100 Dollars (\$95,000,000.00) for purposes of the allocation thereof to Buyer in connection with Buyer's financing and acquisition of the Leases for the Affordable Rental Housing Component of the Projects and any other allowable Project Use Components and the rehabilitation thereof.

(f) New Financing. In connection with Buyer's New Financing for acquisition of the Leases: (i) the State of Hawai'i, through the HHFDC, shall have allocated and set aside for purposes of Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component) not less than \$95,000,000 in multi-family revenue bonds; (ii) such tax-exempt bonds may be and are sold to investors on terms and conditions that permit funding of loans for Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component) on terms and conditions acceptable to Buyer; (iii) the HHFDC shall have reserved and allocated to Buyer, for purposes of Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component), Federal LIHTC of not less than \$5,891,142 annually for the 10-year credit period contemplated by Section 42 of the Code; (iv) the HHFDC shall reserve and allocate to Buyer for purposes of Buyer acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component), State LIHTC of not less than \$2,945,571 annually for the 10-year credit period; (v) such Federal LIHTC and State LIHTC can be sold or syndicated on terms and conditions acceptable to Buyer; and (vi) Buyer receives commercial bank financing as set forth in Section 5.14(d), for acquisition of the Leases for the various Project Use Components, including specifically without limitation the Market Rental Housing Component and the Commercial Rental Component.

(g) HUD Mortgages and CDBG Buy-Out. The pay-off of the HUD Mortgages and the City's buy-out of the CDBG investments, as provided in Section 5.4 and Section 5.5, resulting in the Property being free and clear from the HUD Mortgages and all CDBG



restrictions.

(h) No Change in Applicable Law Relating to New Financing. There shall be no material and adverse change in any federal or State of Hawai'i laws, regulations, or programs relating to the tax-exempt bond financing of the type involved in Buyer's anticipated Bond Financing or the allocation or treatment of Federal LIHTC or State LIHTC.

**6.2 The City's Conditions Precedent.** The City's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.2. Except as otherwise noted, each condition is solely for the benefit of the City and may be waived in whole or in part by the City by written notice to Buyer.

(a) Representations and Warranties. Buyer's representations and warranties contained herein shall be true and correct as of the Closing Date.

(b) Buyer's Performance. Buyer shall have performed all of its obligations that are to be performed by Buyer under this Agreement and in connection with Closing.

(c) No Litigation. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against the City or Buyer that would materially and adversely affect the City's or Buyer's ability to perform its obligations under this Agreement, and there shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, or proceedings against the City that would prohibit the City from consummating this Agreement, including, but not limited to, bid protests and disputes of awards under the RFP; provided, however, that, in the event of the pendency or threat of any such matter, the City and Buyer shall each be entitled to extend the Closing Date, subject to Section 6.3, to resolve such matter.

(d) City Council Approval. Approval from the Honolulu City Council of any material or substantial amendments to this Agreement, or material or substantial changes to the final form of the Leases.

(e) HUD Mortgages and CDBG Buy-Out. The pay-off of the HUD Mortgages and HUD's approval of and the City's buy-out of the CDBG investments, as provided in Section 5.5, resulting in the Property being free and clear from the HUD Mortgages and all CDBG restrictions.

**6.3 Failure of Conditions.** So long as a party is not in default hereunder, if any condition specified in either Section 6.1 or Section 6.2 to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date, or any other applicable date specified in this Agreement, such party may, in its sole discretion, but subject to the rights of the other party under Section 6.1(d) and Section 6.2(c), either (a) terminate this Agreement by delivering written notice to the other party, (b) extend the time available for the satisfaction of such condition by up to a total of ninety (90) days (but in no event later than the Extended Closing Deadline as defined in Section 7.1), or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event that either party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of any such extension period,

then, at such time, such party may elect to proceed pursuant to either clause (a) or (c) in this Section 6.3. In the event the failure of any condition precedent is also a breach of this Agreement by either party, the parties agree that such breach shall be governed pursuant to the terms of Section 8 below.

## SECTION 7 CLOSING

**7.1 Time.** This transaction consists of the City and Buyer simultaneously entering into Leases for each of the 12 Projects constituting the Property. Provided that all conditions set forth in Section 6 have been either satisfied or waived by the appropriate party, the parties shall complete the execution and delivery of the Leases contemplated by this Agreement (the "**Closing**") on April 1, 2013, or such earlier or later date as determined by the City and Buyer (the "**Closing Date**"), but in no event later than June 28, 2013 ("**Closing Deadline**"), unless extended pursuant to Section 6.3; provided, however, that any extension of the Closing Date by the City beyond the Closing Deadline shall require Buyer's written confirmation that such extension of the Closing Date is acceptable to Buyer's Lenders and shall not impair or adversely affect any aspect of Buyer's New Financing or result in any increase in the applicable interest rates at which Buyer is able to borrow funds in connection with the tax-exempt bond and other financing for Buyer's acquisition of the Leases for the Property, or any material change in the market price at which Buyer is able to sell or syndicate the Federal LIHTC and the State LIHTC allocated in connection with Buyer's acquisition of the Leases. The Closing shall in no event occur and the Closing Deadline shall in no event be extended beyond March 31, 2014 (the "**Extended Closing Deadline**"). The City shall have the option to extend the Closing Deadline one or more times in accordance with and subject to the terms of Section 5.3.

**7.2 Escrow.** The Closing shall occur through an escrow handled by Escrow Agent. The terms of this Agreement, together with such additional instructions as Escrow Agent shall reasonably request and the parties shall agree to and such other instructions as the parties shall provide Escrow Agent, shall constitute the escrow instructions to Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to Escrow Agent, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in said additional escrow instructions.

**7.3 The City's Deposit of Documents Into Escrow.** The City shall deposit with Escrow Agent no later than two (2) Business Days before the Closing Date the following documents:

- (a) Four (4) duly executed counterparts of each Lease to which the Closing applies;
- (b) Four (4) duly executed counterparts of the Assignment of Leases and Contracts, if any are to be assigned, with respect to each Project;
- (c) Four (4) duly executed and acknowledged counterparts of a Memorandum of Lease in the form of Exhibit F for each Lease (the "**Memorandum of Lease**");
- (d) Four (4) duly executed counterparts of the Regulatory Agreement for each Project involving an Affordable Rental Housing Component (and/or, if applicable, any

regulatory agreements applicable to the Market Rental Housing Component and the Resident Parking Component);

(e) Four (4) duly executed counterparts of the HOME Use Restriction Agreement, with respect to each applicable HOME Project;

(f) Four (4) duly executed counterparts of the Bill of Sale, with respect to each Project;

(g) All documents required in connection with the release of the HUD Mortgages and the buy-out of the CDBG obligations relating to any of the Projects; and

(h) Such additional documents as may be reasonably necessary to consummate the leasing of the Property in accordance with this Agreement, including written escrow instructions consistent with this Agreement, and, to the extent applicable and acceptable to the City and requiring execution by the City, any agreements, instruments, certificates, and other documents relating to Buyer's New Financing for Buyer's acquisition of the Leases for the Projects.

**7.4 Buyer's Deposit of Documents and Funds.** Buyer shall deposit with Escrow Agent no later than two (2) Business Days before the Closing Date (except as noted below):

(a) The Purchase Price payments, which shall be wired or deposited with the Escrow Agent, in immediately available funds, in connection with and in time for Closing in conformity with the requirements and practices of Buyer's Lenders, Hawai'i escrow practices and the requirements of Hawai'i law;

(b) Four (4) duly executed counterparts of each Lease to which the Closing applies;

(c) Four (4) duly executed counterparts of the Assignment of Leases and Contracts, if applicable;

(d) Four (4) duly executed and acknowledged counterparts of the Memorandum of Lease for each Lease;

(e) Four (4) duly executed counterparts of the Regulatory Agreement for each Project involving an Affordable Rental Housing Component (and/or, if applicable, and any regulatory agreements applicable to the Market Rental Housing Component and the Resident Parking Component);

(f) Four (4) duly executed counterparts of the Bill of Sale, with respect to each Project;

(g) Tax clearance certificates from the State of Hawai'i Department of Taxation and the Internal Revenue Service with respect to Buyer and each party nominated by Buyer to be lessee under each Lease, issued within thirty (30) days prior to the applicable Closing Date;

(h) Resolutions of Buyer and each party nominated by Buyer to be lessee under each Lease, respectively, approving the terms and conditions of, and authorizing the execution and entry into, this Agreement, the applicable lease, and all documents necessary to consummate the transactions contemplated under this Agreement;

(i) Good standing certificate(s) issued within thirty (30) days prior to the applicable Closing Date by the State of Hawai'i Department of Commerce and Consumer Affairs evidencing Buyer and its nominees are in good standing under the laws of the State of Hawai'i;

(j) Certificate(s) of Vendor Compliance;

(k) Four (4) duly executed counterparts of the HOME Use Restriction Agreement, with respect to each applicable HOME Project, evidencing the continuation of HOME restrictions on such HOME Projects;

(l) All documents required in connection with the release of the HUD Mortgages and the buy-out of the CDBG-assisted Projects, if applicable; and

(m) Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the leasing of the Property in accordance with this Agreement.

(n) To the extent available, all bond regulatory agreements, mortgages, and other documents and instruments necessary to be recorded in order to complete Buyer's New Financing, including the Bond Financing and the sale or syndication of the Federal LIHTC and State LIHTC allocated to Buyer's acquisition of the Leases for the applicable Project Use Components of the Projects.

**7.5 Closing.** When the Title Company has received all documents and funds identified in Section 7.3 and Section 7.4, has received written notification from Buyer and the City that all conditions to the Closing have been satisfied or waived, and is irrevocably committed to issue the Title Policies as described in Section 6.1(b), then, and only then, the Title Company and Escrow Agent, as applicable, shall:

(a) Record Memoranda. Record each Memorandum of Lease;

(b) Release of Purchase Price. Release the Purchase Price, the Reserve Accounts, if applicable, and all applicable prorations to the City;

(c) Issue Title Policies. Issue the Title Policies for the Leases to Buyer;

(d) Deliveries to Buyer: Deliver to Buyer (i) a conformed copy (showing all recording information thereon) of each of Memorandum of Lease; (ii) fully executed originals of the Leases; (iii) a fully executed original of the Regulatory Agreements and any other applicable regulatory agreements; (iv) fully executed originals of the Assignments of Leases and Contracts for each Project; and (v) fully executed originals of the Bills of Sale for each Project;

(e) Deliveries to the City: Deliver to City (i) a conformed copy (showing all recording information thereon) of each Memorandum of Lease, and (ii) fully executed originals

of the Leases; (iii) a fully executed original of the Regulatory Agreements and any other applicable regulatory agreements; and (iv) fully executed originals of the Assignments of Leases and Contracts for each Project; and (v) fully executed originals of the Bills of Sale for each Project; and

(f) Record and Make Other Deliveries Relating to New Financing. Record and/or deliver such other documents and instruments, including bond indentures, bond purchase agreements, declarations, loan agreements, regulatory agreements, disclosure agreements, promissory notes, mortgages, certificates, security agreements, financing statements, indentures, legal opinions, and other documents and instruments relating to Buyer's New Financing in accordance with separate escrow instructions that shall be provided to Escrow Agent by Buyer's Lenders and Buyer in connection with such New Financing.

The Title Company shall prepare and the parties shall sign closing statements showing all receipts and disbursements and deliver copies to Buyer and the City and, if applicable, shall file with the Internal Revenue Service (with copies to Buyer and the City) the reporting statement required under Section 6045(e) of the Code.

**7.6 Prorations and Closing Costs.** Subject to the other provisions of this Section 7.6, all receipts and disbursements of the applicable Project will be prorated as of 11:59 p.m. Hawai'i Standard Time on the day immediately preceding the Closing Date ("**Proration Date**"). Not less than three (3) Business Days prior to the Closing Date, Escrow Agent shall submit to Buyer and the City for their approval a tentative prorations schedule showing the categories and amounts of all prorations proposed. The parties shall agree on a final prorations schedule prior to the Closing. If following the Closing either party discovers an error in the prorations statement, it shall notify the other party and the parties shall promptly make any adjustment required.

(a) The City's Costs. Real property taxes and assessments levied, assessed or imposed, if applicable, and other taxes, levied, assessed or imposed with respect to the applicable Project(s), and/or any other costs associated with the applicable Project(s) for any period after the Closing Date that have been paid by the City prior to Closing shall be reimbursed by Buyer as of the Closing. Costs incurred by the City in conducting the City's site inspection of Buyer's offices and certain of Buyer's affordable housing developments on the Mainland United States pursuant to the RFP, if not previously reimbursed, shall be reimbursed by Buyer as of the Closing. As of the Closing Date, Buyer shall be responsible for costs, charges and expenses related to the ownership and operation of the Projects.

(b) Closing Costs. Except as provided herein, all closing costs and escrow fees customarily chargeable to a seller of real estate in Hawai'i shall be paid by the City. All closing costs and escrow and recording fees customarily chargeable to a buyer of real estate in Hawai'i, together with all documentary transfer taxes, including conveyance taxes, the cost of any updates to any ALTA surveys relating to the transactions contemplated by this Agreement, the recordation costs to record all of the Memoranda of Leases, all closing costs associated with Buyer's financing, and all title insurance premiums and the cost of any and all endorsements shall be paid by Buyer. Each party shall pay its own legal and consulting fees.

(c) Tenant Rents, Utility Charges. Rent for the current month paid by tenants, parking revenues, other revenues, income and receivables, utility charges, third-party

contracts that will be assigned to Buyer and all other items of costs and expenses with respect to the Property shall be prorated as of the Proration Date.

(d) Reserve Amounts and Security Deposits. As set forth in Section 5.4(c) above, the Reserve Accounts shall be the City's sole and separate property and the City shall receive the proceeds from the Reserve Accounts. The City shall transfer or cause its managing agents to transfer to Buyer at Closing security deposits held by the City or held by such managing agents on the City's behalf under residential tenant leases and commercial tenant leases, and Buyer shall indemnify and hold harmless the City for any claims by tenants or lessees for the return of security deposits.

(e) Survival. The obligations of this Section 7.6 shall survive the Closing.

**7.7 Possession.** Possession of the Projects shall transfer to Buyer at the Closing in accordance with the Leases.

**7.8 Allocation of Purchase Price.** Prior to and in connection with the Closing, Buyer and the City shall agree upon a reasonable allocation of the Purchase Price among the various Project Use Components and Projects.

## **SECTION 8 DEFAULT AND TERMINATION**

**8.1 In General.** Occurrence of any or all of the following shall constitute a default under this Agreement by the non-performing party:

(a) Failure to Pay. Any failure by a party to pay any charge or other amount required to be paid under this Agreement, or any part thereof, when due unless such failure is cured within five (5) Business Days after written notice that the same was not paid when due; or

(b) Failure to Perform. Except as set forth in subsection (a) above, any failure by a party to observe or perform any other provision, covenant or condition of this Agreement to be observed or performed by such party or the breach of any representation or warranty by such party where such failure or breach continues for ten (10) Business Days after written notice thereof from the other party.

(c) Waiver of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies in connection therewith or of any other rights and remedies provided by this Agreement or by law, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

### **8.2 Remedies.**

(a) Buyer's Remedies. Provided Buyer is not then in breach of this Agreement, Buyer shall have the option to terminate this Agreement (i) after Buyer has approved the Property in accordance with Section 3.7 only in the event any condition to Closing contained in Section 6.1 has not been satisfied or waived by Buyer in writing by the Closing

Date, or (ii) if the City is in breach of its obligations or its representations and warranties under this Agreement as of the Closing Date. If this Agreement is terminated by Buyer as a result of any such breach by the City, the City hereby authorizes Escrow Agent to immediately release and return the Deposit and all interest earned thereon to Buyer and the City shall pay Buyer liquidated damages in the sum of Two Million And No/100 Dollars (\$2,000,000.00) ("**Buyer's Liquidated Damages**"). BUYER AND THE CITY ACKNOWLEDGE AND AGREE THAT FIXING BUYER'S ACTUAL DAMAGES IN THE EVENT OF THE CITY'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT OF THE CITY'S BREACH OF SUCH OBLIGATIONS (OTHER THAN A BREACH OF THE CITY'S INDEMNITY OBLIGATIONS), THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT BUYER'S LIQUIDATED DAMAGES SHALL CONSTITUTE BUYER'S SOLE AND EXCLUSIVE RIGHT TO DAMAGES, AND THAT THIS SUM REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES BUYER WOULD INCUR IN THE EVENT OF THE CITY'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT. BUYER WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES ARISING OUT OF THIS AGREEMENT OTHER THAN AS SET FORTH IN THIS SECTION 8.2(a) AND WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO FILE A NOTICE OF PENDING ACTION OR LIS PENDENS AGAINST THE PROPERTY OR ANY PORTION THEREOF. BY INITIALING IN THE SPACES WHICH FOLLOW, THE CITY AND BUYER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION 8.2(a) GOVERNING BUYER'S LIQUIDATED DAMAGES. BUYER HEREBY ACKNOWLEDGES THAT THESE LIMITATIONS ON BUYER'S REMEDIES HAVE BEEN THE SUBJECT OF SPECIFIC NEGOTIATIONS BETWEEN THE CITY AND BUYER, THAT THE SAME ARE IMPORTANT AND MATERIAL HEREOF, AND ARE SPECIFICALLY DECLARED TO BE OF THE ESSENCE OF THE PARTIES' AGREEMENT AS CONTAINED IN THIS AGREEMENT.

The City (\_\_\_\_\_)

Buyer (\_\_\_\_\_)

(b) The City's Remedies. Provided the City is not then in breach of this Agreement, the City shall have the option to terminate this Agreement if (i) the conditions to Closing contained in Section 6.2 have not been satisfied or waived by the City in writing by the Closing Date, or (ii) if Buyer is in breach of its obligations or its representations and warranties under this Agreement as of the Closing Date. In the event of such termination, the Deposit shall be retained by the City as liquidated damages, as provided in Section 8.2(c) below; provided, however, the foregoing shall not limit any indemnity given by Buyer to the City under this Agreement nor any obligations which survive Closing, and the City shall have all remedies available at law or equity to enforce such indemnity in the event Buyer fails to perform any indemnity obligation set forth in this Agreement and/or if Buyer fails to perform any obligations under this Agreement which survive Closing.

(c) Liquidated Damages. IN THE EVENT THE CLOSING FOR THE LEASES TO BUYER IS NOT CONSUMMATED AS A RESULT OF BUYER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT, THE CITY, BY WRITTEN NOTICE TO BUYER, MAY ELECT TO TERMINATE THIS AGREEMENT AND RECEIVE AS LIQUIDATED DAMAGES ALL OF THE DEPOSIT. BUYER HEREBY AUTHORIZES ESCROW AGENT TO IMMEDIATELY RELEASE THE DEPOSIT TO THE CITY UPON THE CITY'S ELECTION TO TERMINATE THIS AGREEMENT AS PROVIDED IN THIS SECTION 8.2(c), WITHOUT ANY FURTHER AUTHORIZATION FROM BUYER. BUYER AND THE CITY ACKNOWLEDGE AND

AGREE THAT FIXING THE CITY'S ACTUAL DAMAGES IN THE EVENT OF BUYER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT OF BUYER'S BREACH OF SUCH OBLIGATIONS (OTHER THAN A BREACH OF BUYER'S INDEMNITY OBLIGATIONS OR OTHER OBLIGATIONS THAT SURVIVE CLOSING), THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT THE DEPOSIT SHALL CONSTITUTE THE CITY'S SOLE AND EXCLUSIVE RIGHT TO DAMAGES, AND THAT THIS SUM REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES THE CITY WOULD INCUR IN THE EVENT OF BUYER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT PRIOR TO CLOSING. EXCEPT TO THE EXTENT BUYER BREACHES ANY INDEMNITY OBLIGATION HEREUNDER OR FAILS TO SATISFY SUCH OBLIGATIONS THAT SURVIVE CLOSING, THE CITY WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES ARISING OUT OF THIS AGREEMENT OTHER THAN AS SET FORTH IN THIS SECTION 8.2(c). BY INITIALING IN THE SPACES WHICH FOLLOW, THE CITY AND BUYER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION 8.2(c) GOVERNING THE CITY'S LIQUIDATED DAMAGES. THE CITY HEREBY ACKNOWLEDGES THAT THESE LIMITATIONS ON THE CITY'S REMEDIES HAVE BEEN THE SUBJECT OF SPECIFIC NEGOTIATIONS BETWEEN THE CITY AND BUYER, THAT THE SAME ARE IMPORTANT AND MATERIAL PROVISION HEREOF, AND ARE SPECIFICALLY DECLARED TO BE OF THE ESSENCE OF THE PARTIES' AGREEMENT AS CONTAINED IN THIS AGREEMENT. THE CITY HEREBY ACKNOWLEDGES THAT THESE LIMITATIONS ON THE CITY'S REMEDIES HAVE BEEN THE SUBJECT OF SPECIFIC NEGOTIATIONS BETWEEN THE CITY AND BUYER, THAT THE SAME ARE IMPORTANT AND MATERIAL HEREOF, AND ARE SPECIFICALLY DECLARED TO BE OF THE ESSENCE OF THE PARTIES' AGREEMENT AS CONTAINED IN THIS AGREEMENT.

The City (\_\_\_\_\_)

Buyer (\_\_\_\_\_)

**8.3 City Officials Not Personally Liable.** This Agreement has been executed by or on behalf of the City by one or more officials of the City in their capacities as officials of the City, and not in their individual capacities. No personal liability or obligation under this Agreement or under any Lease shall be imposed or assessed against any of said officials in their individual capacities.

**8.4 Buyer Parties Not Personally Liable.** This Agreement has been executed by or on behalf of Buyer by one or more Buyer Parties in their capacities as directors, officers, partners, members, or agents of Buyer, and not in their individual capacities. No personal liability or obligation under this Agreement or under any Lease shall be imposed or assessed against any of said Buyer Parties in their individual capacities.

## **SECTION 9 CASUALTY AND CONDEMNATION**

**9.1 Casualty.** In the event any Project or any Project Use Component in any Project is damaged by any casualty prior to any Closing, the City shall give prompt notice thereof to Buyer, and the City shall have the following options: (a) provided that Buyer confirms and agrees that such insurance proceeds are sufficient to fully repair such damage and/or fully re-build such Project that has been damaged and provided also that Buyer agrees to undertake such repairs or re-building, the City shall have the option to assign to Buyer all insurance



proceeds, if any, payable for such damage (with the consent of the insurance company) or pay all such proceeds to Buyer when received (which obligation shall survive the Closing), but, together with such insurance proceeds, the City shall be required to remit and pay over to Buyer out of the City's own funds the amount of any deductible or self-insured retention under any such insurance, in which event the Closing shall occur and the Lease shall commence, without the City's repairing or being required to repair such damage; or (b) the City shall have the option to terminate this Agreement as to such Project or the Project Use Component, as the case may be, that has been damaged, provided, however, that the City shall not terminate this Agreement as to such Project if Buyer notifies the City, within thirty (30) days after receipt of notice from the City of any such casualty, that Buyer desires to enter into negotiations with the City regarding financing (through tax-exempt bond financing and Federal LIHTC and State LIHTC) the repair, re-building, or reconstruction of such Project, in which event the City agrees to enter into good-faith negotiations with Buyer for a period of sixty (60) days to determine if it might be in the City's interest to arrange for Buyer to repair, re-build, or reconstruct such Project. If, after such 60-day period, the parties have not agreed to the terms and conditions of the financing of the repair, re-building or reconstruction, the City may terminate this Agreement as to such Project or Project Use Component that has been damaged and the City shall have no further obligation to Buyer as to such damaged Project or Project Use Component.

**9.2 Condemnation.** In the event of a taking or threatened taking by condemnation or similar proceedings or actions of all or a substantial portion of any of the Projects or any Project Use Component of any Project prior to Closing by any Governmental Authorities, such that said Project or Project Use Component is no longer economically feasible for the intended use of the Project, this Agreement shall terminate as to such Project or Project Use Component upon written notice of such determination delivered to Buyer, and this Agreement shall have no further force or effect as to such Project or such Project Use Component, except with respect to obligations that by their terms survive such partial termination. Should this Agreement terminate as to such Project or such Project Use Component due to any such condemnation or similar proceedings by any Governmental Authorities other than the City, all condemnation proceeds or other payments as a result of such proceedings shall be paid to the City and Buyer shall have no right to such proceeds, except that the City shall reimburse Buyer for a proportionate amount of Buyer's out-of-pocket costs incurred in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation during the Due Diligence Period, and Buyer's preparation for Closing, including costs and expenses relating to Buyer's contemplated New Financing, in an amount not to exceed the condemnation proceeds received by the City for such condemnation. In the event of any condemnation or similar proceeding or action commenced by the City of any Project or part or all of any Project Use Component of any Project, Buyer shall have the additional right to terminate this Agreement as to such Project or part or all of such Project Use Component of such Project, in which event Escrow Agent shall immediately refund to Buyer a proportionate amount of the Deposit, plus any accrued interest thereon, if any, less escrow fees, if any, as may be chargeable to Buyer, and the City shall also reimburse Buyer for a proportionate amount of Buyer's out-of-pocket expenses in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation during the Due Diligence Period, and Buyer's preparation for Closing, including costs and expenses relating to Buyer's contemplated New Financing. In the event of any condemnation or similar proceedings or actions, whether commenced by the City or any other Governmental Authorities, involving all of the Projects or having the effect that all of the Projects or Project Use Components are no longer economically feasible for the intended uses thereof, this Agreement shall terminate, the Escrow Agent shall immediately refund to Buyer the Deposit, plus any accrued interest thereon, if any, less escrow

fees, if any, as may be chargeable to Buyer, and the City shall reimburse Buyer for Buyer's out-of-pocket expenses in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation during the Due Diligence Period, and Buyer's preparation for Closing, including costs and expenses relating to Buyer's contemplated New Financing, in an amount not to exceed the condemnation proceeds received by the City for such condemnation if such condemnation is prosecuted by Governmental Authorities other than the City.

**9.3 Determination of Purchase Price Adjustment.** In the event that this Agreement is terminated as to any but not all of the Projects and Project Use Components pursuant to Section 9.1 or Section 9.2, the Purchase Price shall be adjusted in the proportion that the fair market value of the Project or Project Use Component bears to the fair market value of all of the Projects subject to this Agreement, as determined by mutual agreement of the City and Buyer, and, failing such Agreement, by a single neutral arbitrator mutually selected by the City and Buyer. If the City and Buyer are unable to agree upon a single arbitrator, the City and Buyer shall each select an arbitrator, the two arbitrators so selected shall then select a third arbitrator, and the three arbitrators so selected shall make such determination by majority vote. In making such determination, the arbitrator or arbitrators shall determine the respective fair market values of the Projects, including any Project or Project Use Component with respect to which this Agreement is terminated under Section 9.1 or Section 9.2, based on the value thereof in light of: (a) Buyer's plans for the Project (and the Project Use Components of the Projects) as contemplated by Buyer's Initial Proposal, Buyer's Best and Final Offer, and this Agreement; and (b) the restrictions on such Project or Project Use Component related thereto, including all restrictions intended to be imposed upon such Project or Project Use Component under the terms of this Agreement. In the event that this Agreement is terminated as to any Project or Project Use Component pursuant to Section 9.1 or Section 9.2, the Closing Date in respect of such Project and the Leases for the Project Use Components of such Projects shall not be extended beyond the Extended Closing Deadline.

## **SECTION 10 REPRESENTATIONS AND WARRANTIES**

**10.1 Buyer's Representations and Warranties.** As a material inducement to the City to execute this Agreement and consummate the transactions contemplated by this Agreement, Buyer makes the following representations and warranties, which representations and warranties are true and correct as of the date hereof. Prior to the Closing Date, Buyer shall notify the City of any modifications to such representations and warranties which are required, as of the result of additional information coming to the knowledge of Buyer between the Effective Date and the Closing, in order to make such representations and warranties true in all material respects.

(a) **Authority.** Buyer has been duly organized and is validly existing as a limited liability company under the laws of the State of Hawai'i, in good standing in the State of Hawai'i, and qualified to do business in the State of Hawai'i. Buyer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Buyer at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Buyer, enforceable in accordance with their terms.

(b) No Conflict. There is no agreement to which Buyer is a party or binding on Buyer which is in conflict with this Agreement or which prevents Buyer from executing or performing its obligations under this Agreement.

(c) Financial Condition. Subject to Buyer's New Financing, Buyer has or will as of the Closing Date have all funds necessary to consummate the transactions contemplated by this Agreement. Highland Property Development, LLC, a California limited liability company, one of Buyer's members, has furnished the City with true and correct copies of its current financial statement, which has been prepared in accordance with recognized and industry-accepted accounting principles consistently applied throughout the periods indicated (the "**Financial Statement**"). The Financial Statement fairly and accurately presents the financial condition of Highland Property Development, LLC, as of the date indicated. There have been no changes in the assets, liabilities, financial condition or affairs set forth or reflected in the Financial Statement since it was delivered to the City that in any one case or in the aggregate constitutes a material adverse change. Subject to Buyer's New Financing, Buyer and its nominees will have sufficient financial capacity to fully perform all obligations and requirements under the Leases and the Regulatory Agreements and to undertake all representations, promises and obligations set forth in the RFP and Buyer's Best and Final Offer.

(d) Tax Returns and Reports. All filings, reports and tax returns of Buyer that are required to be made or filed with any Governmental Authorities have been duly made and filed, and all taxes, assessments, fees and other governmental charges upon Buyer that are due and payable by Buyer have been paid, other than those which are presently payable without penalty or interest, or which Buyer is contesting in good faith.

(e) Litigation and Compliance. There are no suits, other proceedings or investigations pending or threatened against or affecting the business or the properties of Buyer that could materially impair Buyer's ability to perform its obligations under this Agreement, nor is Buyer in violation of any laws or ordinances that could materially impair Buyer's ability to perform its obligations under this Agreement.

(f) Buyer's Reliance. Except for the representations and warranties set forth in Section 10.2 of this Agreement, Buyer is relying solely upon its and its consultants' own due diligence, inspection, investigation and analysis in leasing the Property and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by the City or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(g) RFP Requirements. Buyer has fulfilled and met all of the obligations, responsibilities, minimum qualifications and requirements applicable to Proposers as set forth in the RFP. Buyer represents and warrants that it has the experience, background, personnel and expertise to fully perform under the Leases and the Regulatory Agreements.

(h) Survival. The provisions of Section 10.1 shall survive the Closing.

**10.2 The City's Representations and Warranties.** As a material inducement to Buyer to execute this Agreement and consummate the transactions contemplated by this Agreement, the City makes the following representations and warranties, which representations

and warranties are true and correct as of the date hereof. Prior to the Closing Date, the City shall notify Buyer of any modifications to such representations and warranties which are required, as the result of additional information coming to the knowledge of the City between the date hereof and the Closing, in order to make such representations and warranties true in all material respects.

(a) Title. The City is and shall be on the Closing Date the lawful owner of the Property. Upon the Closing Date the Property shall be free and clear from all liens and encumbrances except the Permitted Exceptions.

(b) Authority. The City has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby, except as set forth in Section 6.2(d). This Agreement has been, and all of the documents to be delivered by the City at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of the City, enforceable in accordance with their terms.

(c) Due Diligence Documents. To the best of the City's actual knowledge, the Due Diligence Documents are not inaccurate or incomplete in any material respect, do not omit any information that materially and adversely affects the value of the Property or Buyer's intended use of the Projects, and fairly and accurately reflect the condition and operations of the Projects.

(d) No Conflict. To the best of the City's actual knowledge, without investigation, there is no agreement to which the City is a party or binding on the City which is in conflict with this Agreement or which prevents the City from executing or performing its obligations under this Agreement.

(e) General Maintenance Obligations. The City shall manage the Property from the date hereof until the Closing Date in its present condition, perform all reasonable maintenance work and ordinary repairs, and pay all reasonable costs and expenses related thereto in the ordinary course of business. The City shall comply in all material respects with all of its obligations imposed by law and by any other contract or agreement pertaining to the Property. Prior to the Closing Date, the City shall keep in place such Property insurance as is in effect as of the date hereof.

(f) Operation of Projects Pending Closing. From and after the Effective Date and until the Closing, the City will continue to operate each of the Projects in the normal course and perform the City's obligations under all commercial leases, residential rental agreements, contracts, service agreements, and other third-party agreements applicable to each Project, but the City agrees that, during the Due Diligence Period and thereafter if Buyer approves the Property pursuant to Section 3.7, the City shall not, without Buyer's consent (which consent shall not be unreasonably withheld, delayed, or conditioned): (i) enter into any new residential rental agreements for any residential units in any of the Projects with any prospective or existing tenants whose household income exceeds 60% of Area Median Income (as determined and published by HUD as adjusted for the number of bedrooms) or who is a full-time student; (ii) cancel, extend the term, modify, amend, or terminate, or permit the assignment of the lessee's interest under any existing commercial lease (if such lease provides that the City has a right to deny the assignment of such lessee's interest in its sole discretion), including specifically

without limitation the Marin Tower Lease Agreement dated August 10, 1994, as amended, and the Chinatown Manor Lease dated May 22, 1995, as amended, or enter into any new commercial lease for any Project; or (iii) extend the term of or amend any existing service agreement or other third-party agreement applicable to any Project or enter into any new service or other third-party agreement that extends beyond the Closing Date for the applicable Project or that is not cancelable without penalty upon thirty (30) days' notice. Buyer shall be reasonably entitled to withhold its consent if any such residential rental agreements, leases, service agreements or other third-party agreements, or the modification, amendment, or termination thereof, would adversely affect any part of Buyer's New Financing for Buyer's acquisition of the Leases. The City acknowledges that, upon and after Closing, Buyer shall be entitled to renew, extend, amend, or terminate any service agreements or other third-party agreements, including contracts for the management of the Projects, in accordance with the terms of such service agreements or other third-party agreements.

(g) City's Actual Knowledge. Where the phrase "to the best of the City's actual knowledge" is used in this Section 10.2, it means the actual knowledge of Keith Ishida, Executive Director of Office of Housing, and/or Christopher Terry, Branch Chief of Property & Parking Management.

**10.3 Notice of Changed Circumstances**. If either party becomes aware of any fact or circumstance that would render false or misleading a representation or warranty made by either party, then it shall immediately give written notice of such fact or circumstance to the other party, but such notice shall not relieve any party of any liabilities or obligations with respect to any representation or warranty, except as provided in Section 10.3.

## **SECTION 11 GENERAL**

**11.1 Notices**. All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (b) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; or (c) two (2) Business Days after deposit with a recognized overnight courier or delivery service. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or legal holiday observed by the City, then such date shall automatically be extended to the next Business Day immediately following such Saturday, Sunday or legal holiday observed by the City.

**The addresses for notice are:**

**If to the City:**

Department of Budget and Fiscal Services  
Honolulu Hale  
530 South King Street, Room 208  
Honolulu, Hawai'i 96813  
**Attn:** Director

***With copies to:***

Department of Community Services  
715 South King Street, Suite 311  
Honolulu, Hawai'i 96813  
**Attn:** Director

***and***

Department of Corporation Counsel  
530 South King Street, Room 110  
Honolulu, Hawai'i 96813  
**Attn:** Gordon Nelson, Esq.

***and***

Schlack Ito, LLC  
Topa Financial Center  
745 Fort Street, Suite 1500  
Honolulu, Hawai'i 96813  
**Attn:** Carl J. Schlack, Jr., Esq.

***and***

CBRE, Inc.  
Pauahi Tower, Suite 1800  
1003 Bishop Street  
Honolulu, Hawai'i 96813-3544  
**Attn:** Scott B. Gomes

**If to Buyer:**

Honolulu Affordable Housing Partners, LLC  
c/o Highland Property Development LLC  
250 W. Colorado Boulevard, Suite 210  
Arcadia, California 91007  
Facsimile: (626) 294-9270

***and***

Richard W. Gushman, II  
3300 Pacific Heights Road  
Honolulu, Hawaii 96813  
E-mail: dgush@dgmgrp.com

***With a copy to:***

Stephen M. Gelber, Esq.  
Joseph A. Dane, Esq.  
Gelber, Gelber & Ingersoll  
745 Fort Street, Suite 1400  
Honolulu, Hawaii 96813  
E-mail: [sgelber@gelberlawyers.com](mailto:sgelber@gelberlawyers.com)  
[jdane@gelberlawyers.com](mailto:jdane@gelberlawyers.com)  
Facsimile: (808) 531-6963

***and***

Gary P. Downs, Esq.  
Tuan A. Pham, Esq.  
Nixon Peabody LLP  
One Embarcadero Center  
18th Floor  
San Francisco, CA 94111-3600  
E-mail: [gdowns@nixonpeabody.com](mailto:gdowns@nixonpeabody.com)  
[tpham@nixonpeabody.com](mailto:tpham@nixonpeabody.com)  
[www.nixonpeabody.com](http://www.nixonpeabody.com)  
Facsimile: (877) 502-9699

Either party may change its address or any address applicable to such party by written notice to the other given in the manner set forth above.

**11.2 Entire Agreement.** This Agreement and the exhibits hereto contain the entire agreement and understanding between Buyer and the City concerning the subject matter of this Agreement and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Buyer or the City concerning the Property or the other matters which are the subject of this Agreement. The parties acknowledge that each party and its counsel have reviewed this Agreement and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed nor applied in the interpretation of this Agreement.

**11.3 Amendments and Waivers.** No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving party. Notwithstanding the foregoing, no communication from or on behalf of the City with respect to the subject matter of this Agreement shall be binding on the City as an amendment of this Agreement unless in writing specifically labeled as an "Amendment" to this Agreement, and signed by the Mayor or his designee. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. Any waiver granted shall apply solely to the specific instance expressly stated.

**11.4 Severability.** The provisions of this Agreement are intended to be severable and enforced to the maximum extent permitted by law. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of the Agreement in any other jurisdiction. The unaffected portion and provisions of the Agreement will be enforced to the maximum extent permitted by law.

**11.5 References.** Unless otherwise indicated, (a) all section and exhibit references are to the sections and exhibits of this Agreement, and (b) all references to days are to calendar days. The exhibits attached hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or legal holiday observed by the City, such time for performance shall be extended to the next Business Day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires. As used in this Agreement the terms "herein" and "hereunder" shall each mean "in this Agreement". As used in this Agreement, the term "including" shall mean "including but not limited to".

**11.6 Governing Law.** The interpretation, construction and enforcement of this Agreement, all matters relating hereto, shall be governed by the laws of the State of Hawai'i. Any judicial proceeding brought by either of the parties against the other party or any dispute arising out of this Agreement, the Closing, any Project or the Property, or any matter relating thereto, shall be brought in the First Circuit Court of the State of Hawai'i, or in the United States District Court for the District of Hawai'i. In that regard, each party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other party with respect to such choice of judicial forum.

**11.7 Time.** Time is of the essence in the performance of the parties' respective obligations under this Agreement, and no notice of a party's intent to require strict compliance with the deadlines set forth in this Agreement is required. The parties hereby acknowledge and agree that the times set forth in this Agreement, including, without limitation, the Extended Closing Deadline shall not be subject to delay as a result of events of a Force Majeure, as that term is defined, below. For purposes of this Agreement, a "**Force Majeure**" shall mean any delay due to war; insurrection; strikes; labor and supply shortages; lock-outs; riots; civil disturbances; floods; fires; casualties; earthquakes; tsunamis; acts of God; acts of the public enemy; epidemics; quarantine restrictions; delays due to the existence or remediation of any hazardous materials; governmental restrictions, including, without limitation delays in permitting or enjoining of the performance of the terms of this Agreement, imposed by any Governmental Authorities other than the City; and any actions by any Governmental Authorities other than the City.

**11.8 Attorneys' Fees.** If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party shall pay the prevailing party's actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including contempt,



garnishment, levy, discovery and bankruptcy. For this purpose “expenses” include, without limitation, court or other proceeding costs and experts’ and attorneys’ fees and their expenses. The phrase “prevailing party” shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise. The City’s obligation to pay any attorneys’ fees pursuant to this Section 11.8 is subject to the City’s normal budgetary appropriations process.

**11.9 Acceptance of Service of Process.** In the event that any legal action is commenced by the City against Buyer, service of process on Buyer shall be made by personal service upon Buyer, or in such manner as may be provided by law, and shall be valid whether made within or without the State of Hawai’i. In the event that any legal action is commenced by Buyer against the City, service of process on the City shall be made in such manner as may be permitted and provided by law.

**11.10 No Assignment.**

(a) General Terms. Buyer recognizes the following: (i) the City’s award of this Agreement to Buyer as the successful Proposer in response to the RFP, (ii) the City’s reliance on the affordable housing management experience, property management experience, real estate expertise and financial wherewithal of Buyer to assure the quality of the management, operation and improvement of the Projects; (iii) that the use, operation and maintenance of the Projects as required under the Leases and the Regulatory Agreements is deemed critical by the City; (iv) that a change in ownership or control of Buyer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the operation of the Property; and (v) that the qualifications and identity of Buyer are of particular concern to the City. Buyer further recognizes that it is because of such qualifications and identity that the City awarded this Agreement to Buyer and is entering into this Agreement with Buyer.

(b) No Transfers. Except as specified in Section 11.10(c) and Section 11.10(d) below, no voluntary or involuntary successor-in-interest of Buyer shall acquire any rights or powers under this Agreement. Except as specified in Section 11.10(c) and Section 11.10(d), Buyer acknowledges and agrees that, under no circumstances whatsoever shall Buyer be entitled to transfer, assign, or otherwise convey all or any portion of Buyer’s interest in this Agreement to any person or entity, nor shall Buyer permit any change in “control” of Buyer. “**Control**,” as used in this Section 11.10, shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity.

(c) Exception for Buyer’s Subsidiary Entities. Buyer has advised the City, and the City acknowledges, that Buyer intends to form, and that Buyer’s financing plan requires that Buyer form, the following subsidiary entities to acquire long-term Leases from the City for the different Project Use Components of the Projects: (i) a separate subsidiary entity (“**Affordable Rental Housing Subsidiary**”) that shall acquire direct Leases from the City for the Affordable Housing Components of the Projects and that shall be owned in substantial part (up to 99.9%) by investors who acquire the Federal LIHTC and State LIHTC allocated in connection with Buyer’s acquisition of the Leases for the Affordable Rental Housing Components of the Projects; (ii) a separate subsidiary entity (“**Market Rental Housing Subsidiary**”) that shall

acquire direct Leases from the City covering the market rental units at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects; (iii) a separate subsidiary entity ("**Commercial Rental Subsidiary**") that shall acquire direct Leases from the City for the commercial space at the Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects; and (iv) a separate subsidiary ("**Redevelopment Subsidiary**") that shall acquire the Leases for the Bachelors Quarters Pauahi Hale, and Kanoa Apartments Projects. Buyer anticipates that the Affordable Rental Housing Subsidiary will also acquire the direct Leases from the City for the Public Parking Components and Resident Parking Components at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, but Buyer has also advised the City that Buyer may, and reserves the right to, form a separate subsidiary entity ("**Public Parking Subsidiary**") to acquire the direct Leases from the City for the Public Parking Components at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, and a separate subsidiary entity ("**Resident Parking Subsidiary**") to acquire the direct Leases from the City for the Resident Parking Components at these Projects. Notwithstanding anything contained in Section 11.10(b), the City hereby agrees that Buyer shall be entitled, upon notice but without further consent or approval by the City, to assign, transfer, and otherwise convey its rights under this Agreement to acquire the Leases for the different Project Use Components, respectively, to the Affordable Rental Housing Subsidiary, the Market Rental Housing Subsidiary, the Commercial Rental Subsidiary, the Redevelopment Subsidiary, and, if applicable, the Public Parking Subsidiary and the Resident Parking Subsidiary, that Buyer forms for purposes of consummating the transactions described in this Agreement. With respect to the Closing of the individual Leases for the different Project Use Components of the Projects, references to the "Buyer" herein shall mean and refer to Honolulu Affordable Housing Partners, LLC, a Hawai'i limited liability company, as well as the respective subsidiary entities created by Honolulu Affordable Housing Partners, LLC, to enter into the Leases for the different Project Use Components of the Projects, but, for purposes of this Agreement and such Leases, such subsidiary entities shall only be responsible and liable to the City under the Leases for the Project Use Components entered into by such subsidiaries and shall not be jointly or severally liable either with Buyer or any other subsidiary entities under this Agreement or under any Leases in respect of any other Project Use Components.

(d) Other Nominees. Notwithstanding anything contained in Section 11.10(b), and in addition to Buyer's rights under Section 11.10(c) immediately preceding, Buyer may designate nominees (other than the subsidiary entities specified in Section 11.10(c)) to take leasehold title of one or more Projects at Closing; provided, however, that unless the City approves such nominee as provided in this Section 11.10(d), Buyer shall remain fully responsible and liable for all terms and conditions, representations and warranties and all other obligations hereunder, including those that survive the Closing. The City reserves the right to review and approve of each such nominee and if the City does not reasonably believe that the nominee can fulfill the requirements of lessee under the respective Lease and/or the Regulatory Agreement, the City may disapprove of such nominee. Buyer shall provide to the City notice of the designation of any nominee no less than forty-five (45) days prior to the Closing Date for the applicable Project, together with such information and documents that the City may reasonably require in connection with such review, including, but not limited to, financial statements and financial capacity of the nominee, experience of the nominee in the successful management, operations and maintenance of rental housing communities, and specifically, affordable rental housing communities, key personnel that will manage and operate the Project, and any other information the City deems necessary or convenient to review such request. Any reference to Buyer hereunder, shall include the nominee for such Project.

**11.11 No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the City and Buyer and Buyer's subsidiary entities, and nominees, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

**11.12 No Brokers, Indemnity.** The City has retained CBRE, Inc. as its real estate broker pursuant to the terms and conditions of a written agreement between the City and CBRE, Inc. ("**CBRE Agreement**"). Except as provided in the CBRE Agreement, the City has not retained any other broker or agent in connection with this Agreement. The City shall indemnify, defend and hold harmless Buyer from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the City has agreed to pay to CBRE, Inc., or which is claimed to be due by CBRE, Inc., or any other person as a result of the actions of the City. Buyer warrants to the City that Buyer has not retained any real estate broker or agent in connection with the negotiation of this Agreement, and that Buyer knows of no real estate broker or agent who is entitled to a commission in connection with this Agreement except as otherwise provided in the CBRE Agreement. Buyer shall indemnify, defend and hold harmless the City from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which Buyer has agreed to pay or which is claimed to be due as a result of the actions of Buyer. This Section 11.12 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

**11.13 Publicity.** Except for those documents labeled confidential and proprietary information in Buyer's Initial Proposal and Buyer's Best and Final Offer, the parties agree that Buyer's Initial Proposal, Buyer's Best and Final Offer, the provisions of this Agreement, the Leases, the Regulatory Agreements and all other documents in connection therewith may be subject to public disclosure under Hawai'i Revised Statutes Chapter 92F and/or the Freedom of Information Act, unless exempted by law. In addition, the City and Buyer may publicize the terms of this transaction in press releases, publications and speeches, but shall confer with each other before doing so. The provisions of this Section 11.13 shall survive any termination of this Agreement.

**11.14 Joint and Several Liability.** Except as provided in Section 11.10(c), if Buyer consists of more than one entity or party, all obligations of Buyer hereunder shall be the joint and several responsibility of each entity and party.

**11.15 Computation of Time.** Except as otherwise provided in this Agreement, all references to days are calendar days, thereby including Saturdays, Sundays and legal holidays observed by the City. All references to "**Business Days**" shall be all days except for Saturdays, Sundays and legal holidays observed by the City. If a due date determined under this Agreement falls on a Saturday, Sunday or an official legal holiday observed by the City, such due date will be deemed to be the next Business Day.

**11.16 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
Department of Budget and Fiscal Services

\_\_\_\_\_  
Department of Community Services

**CITY AND COUNTY OF HONOLULU**,  
a municipal corporation of the State of  
Hawaii

By \_\_\_\_\_  
**Peter B. Carlisle**  
Mayor

**"City"**

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Deputy Corporation Counsel

**HONOLULU AFFORDABLE HOUSING  
PARTNERS, LLC**, a Hawaii limited liability  
company

By **Highland Property Development LLC**,  
a California limited liability company  
Its Managing Member

By \_\_\_\_\_  
**William E. Rice**  
Its Authorized Managing Member

**"Buyer"**

## EXHIBIT A

### PROJECT SITE DESCRIPTIONS

#### 1. **BACHELOR'S QUARTERS**

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 11890, area 45,027 square feet, more or less, as shown on Map 852, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees of the Estate of James Campbell, deceased.

Being the land(s) described in Transfer Certificate of Title No. 476,952 issued to the CITY AND COUNTY OF HONOLULU, a municipal corporation.

#### 2. **CHINATOWN GATEWAY PLAZA**

All of that certain parcel of land situate, lying and being at Honolulu, Oahu, State of Hawaii, described as follows:

PARCEL A, being 38,902 square feet, as shown on map prepared by M. Yamashita, Land Surveyor, dated March 21, 1969, approved by the Planning Department, City and County of Honolulu, on May 15, 1969, comprised of the following:

##### **-PARCEL FIRST:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 2474 to F. Spencer and Land Commission Award Number 5528 to E. Dennis) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 3 and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the west corner of Lot 1 (Map 2) of Land Court Application Number 963, and on the southeast side of Nuuanu Avenue, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

- |    |          |       |   |
|----|----------|-------|---|
| 1. | 332° 44' | 70.00 | feet along Lot 1 (Map 2) of Land Court Application 963; |
| 2. | 59° 40'  | 42.50 | feet along Lot 1 (Map 2) of Land Court Application 714; |
| 3. | 333° 07' | 1.40  | feet along same;  |
| 4. | 63° 50'  | 3.10  | feet along R. P. 74, L. C. Aw. 275 to H. Zupplein;      |
| 5. | 149° 15' | 18.60 | feet along same;  |

- |    |          |       |   |
|----|----------|-------|---|
| 6. | 153° 55' | 11.76 | feet along R. P. 6, L. C. Aw. 37 to James Austin;   |
| 7. | 155° 14' | 40.15 | feet along same;  |
| 8. | 238° 40' | 44.79 | feet along the southeast side of Nuuanu Avenue to the point of beginning and containing an area of 3,197 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated April 11, 1969, filed on April 11, 1969 at the Circuit Court of the First Circuit, Civil No. 26578, recorded in Liber 6481 at Page 48.

**-PARCEL SECOND:-**

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Grant Number 3810 to H. K. Dwight and portion(s) of Royal Patent Number 861, Land Commission Award Number 3204 to M. Beck and Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 11 and thus bounded and described:

Beginning at the south corner of this parcel of land, being also the east corner of Lot 1 (Map 2) of Land Court Application 714, and on the northwest side of Bethel Street, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

- |    |          |        |  |
|----|----------|--------|--|
| 1. | 151° 00' | 122.72 | feet along Lot 1 (Map 2) of Land Court Application 714;  |
| 2. | 241° 05' | 61.50  | feet along Lots 1, 2 and 3 (Map 2) of Land Court Application 963 and along remainder of R. P. 301, L. C. Aw. 272 to Joseph Booth;                  |
| 3. | 331° 01' | 120.30 | feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 861, L. C. Aw. 3204 to M. Beck and along R. P. Grant 3809 to W. Mutch; |
| 4. | 58° 49'  | 61.50  | feet along the northwest side of Bethel Street to the point of beginning and containing an area of 7,471 square feet, more or less.                |

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated May 8, 1970, filed on May 8, 1970 at the Circuit Court of the First Circuit, Civil No. 26576, recorded in Liber 7008 at Page 271.

**-PARCEL THIRD:-**

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Grant Number 3809 to W. Mutch and portion(s) of Royal Patent Number 655, Land Commission Award Number 877 to Kaana no Poomana; Royal Patent Number 83, Land Commission Award Number 719 to Z. Sampson; Royal Patent Number 861, Land Commission Award Number 3204 to M. Beck; Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth; Royal Patent Number 577, Land Commission Award Number 2937 to W. Harbottle; and Royal Patent Number 578, Land Commission Award Number 130 to Kekuapanio) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 10 and thus bounded and described:

Beginning at the east corner of this parcel of land, being also the west corner of Hotel and Bethel Streets, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 618.98 feet south and 4,291.81 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 58° 49'  | 131.04 | feet along the northwest side of Bethel Street;   |
| 2. | 151° 01' | 120.30 | feet along R. P. Grant 3810 to H. K. Dwight and remainders of R. P. 861, L. C. Aw. 3204 to M. Beck and R. P. 301, L. C. Aw. 272 to Joseph Booth;                    |
| 3. | 238° 40' | 44.93  | feet along remainder of R. P. 301, L. C. Aw. 272 to Joseph Booth;   |
| 4. | 146° 22' | 72.55  | feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 577, L. C. Aw. 2937 to W. Harbottle;  |
| 5. | 238° 40' | 12.00  | feet along the southeast side of Nuuanu Avenue;   |
| 6. | 326° 22' | 74.13  | feet along remainders of R. P. 577, L. C. Aw. 2937 to W. Harbottle and R. P. 301, L. C. Aw. 272 to Joseph Booth;  |
| 7. | 236° 28' | 64.61  | feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 578, L. C. Aw. 130 to Kekuapanio and along a jog on the southwest side of Hotel Street; |
| 8. | 326° 31' | 121.53 | feet along the southwest side of Hotel Street to the point of beginning and containing an area of 16,053 square feet, more or less.                                 |



BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, dated November 16, 1970, filed on November 16, 1970 at the Circuit Court of the First Circuit, Civil No. 26692, recorded in Liber 7277 at Page 382.

Excepting and excluding PARCEL C, being 136 square feet, as shown on map prepared by M. Yamashita, Land Surveyor, dated March 21, 1969, approved by the Planning Department, City and County of Honolulu, on May 15, 1969.

**-PARCEL FOURTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 579, Land Commission Award Number 680 to Kekuanaoa; Royal Patent Number 577, Land Commission Award Number 2937 to W. Harbottle; Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth; and Royal Patent Number 578, Land Commission Award Number 130 to Kekuapanio) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 9 and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the south corner of Nuuanu Avenue and Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 458.11 feet south and 4,398.78 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

- |    |          |       |   |
|----|----------|-------|---|
| 1. | 326° 28' | 71.66 | feet along the southwest side of Hotel Street;  |
| 2. | 56° 28'  | 64.21 | feet along remainders of R. P. 578, L. C. Aw. 130 to Kekuapanio and R. P. 301, L. C. Aw. 272 to Joseph Booth;                       |
| 3. | 146° 22' | 29.13 | feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 577, L. C. Aw. 2937 to W. Harbottle;                    |
| 4. | 238° 40' | 31.00 | feet along remainder of R. P. 577, L. C. Aw. 2937 to W. Harbottle;  |
| 5. | 146° 22' | 45.00 | feet along same;  |
| 6. | 238° 40' | 33.38 | feet along the southeast side of Nuuanu Avenue to the point of beginning and containing an area of 3,291 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated November 20, 1970 at the Circuit Court of the First Circuit, Civil No. 26698, recorded in Liber 7285 at Page 206.

Excepting and excluding PARCEL B, being 79 square feet, as shown on map prepared by M. Yamashita, Land Surveyor, dated March 21, 1969, approved by the Planning Department, City and County of Honolulu, on May 15, 1969.

**-PARCEL FIFTH:-**

All of Deed: Minister of Interior to J. W. Austin dated August 13, 1890 and recorded in the Conveyances Division of the Department of Land and Natural Resources of the State of Hawaii in Liber 125, page 308; and portions of Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth and Royal Patent Number 2937 to W. Harbottle, situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 7 and thus bounded and described:

Beginning at the west corner of this parcel of land, and on the southwest side of Nuuanu Avenue, the true azimuth and distance from the north corner of Lot 2 and the west corner of Lot 3 (Map 2) of Land Court Application 963 being 238° 40' 3.91 feet, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

- |    |          |       |  |
|----|----------|-------|--|
| 1. | 238° 40' | 55.27 | feet along the southeast side of Nuuanu Avenue;  |
| 2. | 326° 22' | 72.55 | feet along remainders of R. P. 577, L. C. Aw. 2937 to W. Harbottle and R. P. 301, L. C. Aw. 272 to Joseph Booth; |
| 3. | 58° 40'  | 44.93 | feet along remainder of R. P. 301, L. C. Aw. 272 to Joseph Booth;  |
| 4. | 61° 05'  | 6.52  | feet along same and along R. P. 861, L. C. Aw. 3204 to M. Beck;  |
| 5. | 171° 16' | 44.15 | feet along Lot 3 (Map 2) of Land Court Application 963;  |
| 6. | 155° 30' | 25.00 | feet along same;   |
| 7. | 58° 40'  | 27.13 | feet along same;   |
| 8. | 332° 20' | 6.66  | feet along same to the point of beginning and containing an area of 2,865 square feet, more or less.             |

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated March 25, 1971, filed on March 25, 1971 at the Circuit Court of the First Circuit, Civil No. 26575, recorded in Liber 7471 at Page 144.

**-PARCEL SIXTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 577, Land Commission Award Number 2937 to W. Harbottle) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 8 and thus bounded and described:

Beginning at the north corner of this parcel of land, and on the southeast side of Nuuanu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 475.47 feet south and 4,427.29 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

- |    |          |       |   |
|----|----------|-------|---|
| 1. | 326° 22' | 45.00 | feet along remainder of R. P. 577, L. C. Aw. 2937 to W. Harbottle;  |
| 2. | 58° 40'  | 31.00 | feet along same;  |
| 3. | 146° 22' | 45.00 | feet along same;  |
| 4. | 238° 40' | 31.00 | feet along the southeast side of Nuuanu Avenue to the point of beginning and containing an area of 1,395 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated March 25, 1971, filed on March 15, 1971 at the Circuit Court of the First Circuit, Civil No. 26575, recorded in Liber 7471 at Page 144.

**-PARCEL SEVENTH:-**

All of that certain parcel of land situate at Honolulu, Oahu, Hawaii, described as follows:

LOT 1, area 1,582 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 963 of Bishop Trust Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 142,963 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

**-PARCEL EIGHTH:-**

All of that certain parcel of land situate at Honolulu, Oahu, State of Hawaii, described as follows:

LOT 2, area 1,559 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 963 of Bishop Trust Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 140,947 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

**-PARCEL NINTH:-**

All of that certain parcel of land situate at Honolulu, Oahu, State of Hawaii, described as follows:

LOT 3, area 1,704 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 963 of Bishop Trust Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 140,946 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

3. **CHINATOWN MANOR**

**-PARCEL FIRST:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 3436, Apana 2 to Alexander A. Cornoit, Royal Patent Grant Number 1755 to Kawahauwila and Royal Patent Number 1115, Land Commission Award Number 723 to Kawahauwila) situate, lying and being at City and County of Honolulu, Island of Oahu, State of Hawaii, being PARCEL 1 of "KEKAULIKE PARKING LOT REDEVELOPMENT PROJECT" and thus bounded and described:

Beginning at the east corner of this parcel of land, being also the north corner of Land Court Application 185 (Map 1) on the southwest side of Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 444.00 feet north and 4,968.55 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 18-3-1-47, thence running by azimuths measured clockwise from true South:

1.	54° 10'	25.50	feet along Land Court Application 185 (Map 1);
2.	156° 10'	28.00	feet along same;
3.	68° 10'	19.80	feet along same;
4.	150° 50'	27.45	feet along remainders of R. P. 1115, L.C. Aw. 723 to Kawahauwila and Grant 1755 to Kawahauwila;
5.	264° 50'	44.10	feet along south side of River Street;
6.	327° 38'	37.00	feet along the southwest side of Hotel Street to the point of beginning and containing an area of 1,441 square feet, more or less.

**-PARCEL SECOND:-**

All of that certain parcel of land situate at Honolulu, City and County of Honolulu, Island of Oahu, State of Hawaii, containing an area of 16,485.0 square feet, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 185 of L. L. McCandless and others.

Excepting therefrom an alleyway, bounded and described as follows:

Beginning at the southeast corner on King Street, from said corner the Government Street Monument bears by true azimuth 178° 37' 50" 123.03 feet, and running as follows by true azimuths:

1.	248° 20'	31.00	feet, along L.C.A. 813 to Hooliliamana, owned by C.T. Wills;
2.	331° 35'	1.30	feet, along L.C.A. 813 to Hooliliamana, owned by C.T. Wills;
3.	244° 15°	24.50	feet, along L.C.A. 852 to Kawewela, owned by McCandless and Armstrong;
4.	314° 12'	4.00	feet, along L.C.A. 852 to Kawewela, owned by McCandless and Armstrong;
5.	242° 37'	50.64	feet, along L.C.A. 852 to Kawewela, owned by McCandless and Armstrong;
6.	157° 30'	5.25	feet, along L.C.A. 606 to Kaula no Kaou, owned by McCandless and Armstrong;
7.	67° 30'	50.50	feet, along Grant 69 D.P.W. owned by McCandless and Armstrong;
8.	67° 40'	27.50	feet, along L.C.A. 723 to Kawahauwila, owned by A. A. Cornoit, Schaefer, Agent;
9.	69° 20'	27.30	feet, along L.C.A. 723 to Kawahauwila, owned by J.P. Mendonca;
10.	357° 20'	6.90	feet, along King Street to the initial point, and containing an area of 710.00 square feet, more or less.

Being land(s) described in Transfer Certificate of Title No. 447,624 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

**-PARCEL THIRD:-**

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 5709, Land Commission Award 3 and 69, Apana 2 to Kaapuiki and Kaniau no Keomailani) situate, lying and being at City and County of Honolulu,

Island of Oahu, State of Hawaii, being PARCEL 3 of "KEKAULIKE PARKING LOT REDEVELOPMENT PROJECT" and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the northeast corner of Land Court Application 185 (Map 1), on the southwest side of Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 377.27 feet north and 4,926.26 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 18-3-1-47, thence running by azimuths measured clockwise from true South:

- |    |          |       |  |
|----|----------|-------|--|
| 1. | 327° 38' | 80.48 | feet along the southwest side of Hotel Street;   |
| 2. | 72° 30'  | 44.09 | feet along R. P. 7233, L. C. Aw. 3 and 69, Ap. 1 to Kaapuiki and Kaniau no Keomailani and Land Court Application 749 (Map 1);      |
| 3. | 147° 45' | 4.65  | feet along Land Court Application 749 (Map 1);   |
| 4. | 57° 45'  | 2.66  | feet along same;   |
| 5. | 166° 09' | 73.95 | feet along R. P. 7233, L. C. Aw. 3 and 69, Ap. 1 to Kaapuiki and Kaniau no Keomailani and Land Court Application 185 (Map 1);      |
| 6. | 252° 05' | 22.50 | feet along Land Court Application 185 (Map 1) to the point of beginning and containing an area of 2,730 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated October 24, 1994, filed on October 26, 1994 at the Circuit Court of the First Circuit, Civil No. 92-0177-01, filed as Land Court Document No. 2195504, recorded as Document No. 94-186562.

4. **HARBOR VILLAGE**

All of that certain parcel of land situate at Kapuukolo, City and County of Honolulu, State of Hawaii, described as follows:

LOT C, being 28,388 square feet, as shown on map prepared by Ronald Batula, Land Surveyor, dated July 11, 1991, approved by Department of Land Utilization, City and County of Honolulu, on July 18, 1991, comprised of the following:

**-PARCEL FIRST:-**

All of that certain parcel of land situate at Kapuukolo, City and County of Honolulu, State of Hawaii, described as follows:

LOT A-2, area 23,578 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited.

Being the land(s) described in Transfer Certificate of Title No. 5,339 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii.

Together with a perpetual, nonexclusive easement over, across, and upon the entire parcel of Lot A-1, area 1,369.0 square feet, more or less, as shown on Map 3, filed with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited, as granted by EXCHANGE OF EASEMENTS AND CANCELLATION OF EASEMENT, dated July 22, 1991, filed as Land Court Document No. 1850617, recorded as Document No. 91-124964; and subject to the terms and provisions contained therein.

**-PARCEL SECOND:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being on the westerly side of North King Street, at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL D, being an alley and thus bounded and described:

Beginning at the southeast corner of this parcel of land, and on the westerly side of North King Street, the true azimuth and distance from a Government Survey Street Monument set at an angle in North King Street and North of Kekaulike Street being 128° 30' 30" 66.12 feet, as shown on Land Division Parcel Map File No. 7-9-2-33, and running by azimuths measured clockwise from true South:

- |    |      |         |       |   |
|----|------|---------|-------|---|
| 1. | 61°  | 05'     | 73.86 | feet along the northwest face of building erected on the land owned by George K. A. Lee and others; |
| 2. | 27°  | 30'     | 14.70 | feet along same and along Lot 1 (Map 1) of Land Court Application 1132;                             |
| 3. | 61°  | 40'     | 6.43  | feet along Lot 1 (Map 1) of Land Court Application No. 1132;  |
| 4. | 134° | 36'     | 3.50  | feet along remainder of R. P. 1088, L. C. Aw. 170 to M. Kekuanaoa along Parcel A;                   |
| 5. | 263° | 05' 30" | 3.59  | feet along remainder of R. P. 1088, L. C. Aw. 170 to M. Kekuanaoa along Parcel B;                   |

- |    |              |       |  |
|----|--------------|-------|--|
| 6. | 207° 20' 30" | 16.90 | feet along the southeast face of building erected on the land owned by James R. Winston along Parcel B;                              |
| 7. | 241° 27'     | 77.27 | feet along the southeast face of building erected on the land owned by James R. Winston partly along Parcel B;                       |
| 8. | 352° 40'     | 3.05  | feet along the westerly side of North King Street to the point of beginning and containing an area of 308 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : JAMES R. WINSTON, husband of Delores J. Winston

GRANTEE : CITY AND COUNTY OF HONOLULU, a municipal corporation of the Territory of Hawaii

DATED : March 5, 1959

RECORDED : Liber 3665 Page 328

**-PARCEL THIRD:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL A, and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the west corner of Parcel B, the true azimuth and distance from the end of course 5 of Land Court Application 708 (Map 1) being 226° 29' 30" 50.00 feet, and the coordinates of said point of beginning referred to a Government Survey Street Monument (H.T.S.) set at an angle in North King Street and North of Kekaulike Street being 25.38 feet north and 165.35 feet west, as shown on Land Division Parcel Map File No. 7-9-2-33, and running by azimuths measured clockwise from true South:

- |    |          |       |  |
|----|----------|-------|--|
| 1. | 314° 36' | 51.28 | feet along remainder of R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa along Parcels B and D (Alley); |
| 2. | 47° 22'  | 46.65 | feet along Lot 1 (Map 1) of Land Court Application No. 1132;                                   |
| 3. | 132° 20' | 3.05  | feet along same;   |
| 4. | 75° 50'  | 2.23  | feet along same;   |
| 5. | 132° 56' | 46.50 | feet along Lot A (Map 2) of Land Court Application No. 708;                                    |



6. 226° 29' 30" 50.00 feet along same to the point of beginning and containing an area of 2,499 square feet, more or less.

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED

GRANTOR : JAMES R. WINSTON, husband of Delores J. Winston

GRANTEE : CITY AND COUNTY OF HONOLULU, a municipal corporation of the Territory of Hawaii

DATED : March 19, 1959

RECORDED : Liber 3704 Page 95

Together with a perpetual, nonexclusive easement over, across, and upon the entire parcel of Lot A-1, area 1,369.0 square feet, more or less, as shown on Map 3, filed with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited, as granted by EXCHANGE OF EASEMENTS AND CANCELLATION OF EASEMENT, dated July 22, 1991, filed as Land Court Document No. 1850617, recorded as Document No. 91-124964; and subject to the terms and provisions contained therein.

**-PARCEL FOURTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL B and thus bounded and described:

Beginning at the west corner of this parcel of land, being also the north corner of Parcel A, the true azimuth and distance from the end of course 5 of Land Court Application 708 (Map 1) being 226° 29' 30" 50.00 feet, and the coordinates of said point of beginning referred to a Government Survey Street Monument (H.T.S.) set at an angle in North King Street and North of Kekaulike Street being 25.38 feet north and 165.35 feet west, as shown on Land Division Parcel Map File No. 7-9-2-33, and running by azimuths measured clockwise from true South:

1.	226° 29' 30"	57.34	feet along Lot A (Map 2) of Land Court Application 708;
2.	352° 40'	56.18	feet along remainder of R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa;
3.	61° 27'	3.89	feet along same along the northwest side of Alley (Parcel D);
4.	27° 20' 30"	16.90	feet along same;
5.	83° 05' 30"	3.59	feet along same;
6.	134° 36'	47.73	feet along remainder of R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa along Parcel A to the

point of beginning and containing an area of 1,851 square feet, more or less.

Together with an easement for ingress and egress purposes over, along across and upon Parcel D, being an alley leading from the end of Course 3 of the above described Parcel B, northeasterly to King Street between the E. C. Winston and Lee Let Building, as granted by DEED dated March 19, 1959, recorded in Liber 3704 at Page 95, more particularly described therein.

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED

GRANTOR : JAMES R. WINSTON, husband of Delores J. Winston  
GRANTEE : CITY AND COUNTY OF HONOLULU, a municipal corporation of the Territory of Hawaii  
DATED : March 19, 1959  
RECORDED : Liber 3704 Page 95

Together with a perpetual, nonexclusive easement over, across, and upon the entire parcel of Lot A-1, area 1,369.0 square feet, more or less, as shown on Map 3, filed with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited, as granted by EXCHANGE OF EASEMENTS AND CANCELLATION OF EASEMENT, dated July 22, 1991, filed as Land Court Document No. 1850617, recorded as Document No. 91-124964; and subject to the terms and provisions contained therein.

**-PARCEL FIFTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 1 and thus bounded and described:

Beginning at the west corner of this parcel of land, being also the south corner of Lot A-1 (Map 3) of Land Court Application No. 708, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 283.86 feet north and 5,227.55 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 17-10-7-25, and running by azimuths measured clockwise from true South:

- |    |              |       |  |
|----|--------------|-------|--|
| 1. | 226° 29' 30" | 4.03  | feet along Lot A-1 (Map 3) of Land Court Application No. 708;  |
| 2. | 352° 40'     | 47.29 | feet along remainder R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa;  |
| 3. | 61° 27'      | 3.49  | feet along same;   |
| 4. | 172° 40'     | 46.18 | feet along River-Nimitz Housing Project to the point of beginning and containing an area of 152 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : JAMES THEODORE WINSTON, husband of Linden Proden Winston, MARGARET PATRICIA WINSTON, unmarried, SUSAN RAE WINSTON NOBLE, wife of John Raymond Noble, LINDA KAY WINSTON ROBINSON, wife of David Kirk Robinson

GRANTEE : CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

DATED : July 22, 1991

RECORDED : Document No. 91-124963

5. **KANOA APARTMENTS**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 401, Land Commission Award Number 8305, Apana 1 to P. Kanoa) situate, lying and being at Kainapuaa, Kapalama, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described:

Beginning at an iron pin at the west corner of this piece of land, and on the northeasterly side of Kanoa Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kalaepohaku" being 2,354.08 feet south and 1,844.20 feet west, and running by true azimuths measured clockwise from South:

- |    |      |     |     |        |  |
|----|------|-----|-----|--------|--|
| 1. | 236° | 24' | 30" | 137.07 | feet to an iron pin;   |
| 2. | 257° | 51' |     | 89.49  | feet to an iron pin;   |
| 3. | 325° | 51' | 30" | 50.70  | feet along R. P. 157, L. C. Aw. 8564 to Z. Kaauwai to an old pipe;   |
| 4. | 320° | 45' |     | 14.25  | feet along R. P. 157, L. C. Aw. 8564 to Z. Kaauwai to an iron pipe;  |
| 5. | 52°  | 20' |     | 59.07  | feet to an iron pin;   |
| 6. | 142° | 05' |     | 5.38   | feet to an old pipe;   |
| 7. | 57°  | 09' |     | 53.74  | feet to an "→" cut in tile wall;   |
| 8. | 56°  | 33' |     | 109.20 | feet to an "→" cut in tile wall;   |
| 9. | 146° | 24' | 30" | 95.47  | feet along the northeasterly side of Kanoa Street to the point of beginning, containing an area of 20,000 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : RONALD Y. C. YEE, trustee for the creditors and members  
of HCHA MODEL CITIES HOUSING DEVELOPMENT  
CORPORATION, a Hawaii nonprofit corporation

GRANTEE : HONOLULU REDEVELOPMENT AGENCY, an agency of  
the City and County of Honolulu, State of Hawaii

DATED : June 26, 1972

RECORDED : Liber 8777 Page 465

REDESIGNATION OF HONOLULU REDEVELOPMENT AGENCY AS CITY AND  
COUNTY OF HONOLULU dated December 24, 1975, recorded in Liber 11175 at  
Page 325.

6. **KULANA NANI APARTMENTS**

All of that certain parcel of land situate Heeia, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1260-B, area 185,699 square feet, more or less, as shown on Map 105, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1100 of the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased.

Being the land(s) described in Transfer Certificate of Title No. 941,124 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i.

7. **MANOA GARDENS**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 643 to C. Kanaina and Land Commission Award 8559 Apanas 9 and 10 to C. Kanaina) situate, lying and being at Manoa Valley, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 2 and thus bounded and described:

Beginning at the south corner of this parcel of land, on the northwest corner of Kahaloa Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAKA" being 2,146.36 feet south and 1,767.11 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 18-3-1-54, and running by azimuths measured clockwise from true South:

1. 127° 52' 38.69 feet along the northeast side of Kahaloa Drive Extension;
2. Thence along same, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being 172° 52' 28.28 feet;
3. 127° 52' 44.00 feet along same;

4. Thence still along same, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being 82° 52' 28.28 feet;
5. 127° 52' 12.56 feet along same;
6. Thence along remainders of Grant 643 to C. Kanaina and Land Commission Award 8559 Apanas 9 and 10 to C. Kanaina, on a curve to the right with a radius of 10.00 feet, the chord azimuth and distance being 176° 56' 15.11 feet;
7. 226° 00' 121.45 feet along same;
8. 136° 00' 277.75 feet along same;
9. 226° 00' 146.00 feet along same;
10. 136° 00' 40.00 feet along same;
11. 226° 00' 271.51 feet along same;
12. 308° 17' 30" 395.76 feet along same;

Thence along Grant 40 to Napuaa along the middle of Manoa Stream for the next seven (7) courses, the direct azimuths and distance on said middle of stream being:

13. 84° 06' 50" 27.55 feet;
14. 92° 28' 88.98 feet;
15. 45° 25' 50" 23.20 feet;
16. 18° 30' 35.00 feet;
17. 318° 20' 26.00 feet;
18. 13° 57' 30.69 feet;
19. 29° 42' 115.35 feet;

Thence along Lots 7 and 6 (Map 3) of Land Court Application 887 and Lot 2 (Map 1) of Land Court Consolidation 163 along the middle of Manoa Stream, the direct azimuth and distance on said middle of stream being:

20. 31° 21' 157.20 feet;

Thence along Lot 2 (Map 1) of Land Court Consolidation 163 along the middle of Manoa Stream, the direct azimuth and distance on said middle of stream being:

21. 39° 15' 30" 64.05 feet;

Thence along Grant 44 to Elemakule along the middle of Manoa Stream, the direct azimuth and distance on said middle of stream being:

22. 37° 19' 93.18 feet to the point of beginning and containing an area of 4.168 acres.

Said above described parcel of land having been acquired by CITY AND COUNTY OF HONOLULU, by FINAL ORDER OF CONDEMNATION of the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE P. BISHOP, deceased, dated May 26, 1955, recorded in Liber 2978 at Page 192.

8. **MARIN TOWER**

All of that certain parcel of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT A, being 44,697 square feet, more or less, as shown on map dated November 26, 1991, approved by the Department of Land Utilization, City and County of Honolulu, on January 9, 1992, comprised of the following:

**-PARCEL FIRST:-**

All of that certain parcel of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1-C-2, area 504 square feet, more or less, as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 910 of The Liberty Bank of Honolulu.

Being land(s) described in Transfer Certificate of Title No. 67,666 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

**-PARCEL SECOND:-**

All of those certain parcels of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1-D, area 982 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 910 of The Liberty Bank of Honolulu; and

LOTS: A-1-B, area 187 square feet, more or less, and  
B-2-B, area 11 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1077 of Lee Ong.

Being land(s) described in Transfer Certificate of Title No. 66,423 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

**-PARCEL THIRD:-**

All of those certain parcels of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: A-1-A-2, area 93 square feet, more or less, and  
B-2-A-2, area 6 square feet, more or less, as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1077 of Lee Ong.

Being land(s) described in Transfer Certificate of Title No. 67,667 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

**PARCEL FOURTH:-**

All of those certain parcels of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 2, area 2,035 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 910 of The Liberty Bank of Honolulu; and

LOTS: A-2, area 434 square feet, more or less, and  
B-3, area 2,220 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1077 of Lee Ong.

Being land(s) described in Transfer Certificate of Title No. 67,166 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

**PARCEL FIFTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 47, Land Commission Award 90 to K. Montgomery) situate, lying and being on the Southeast side of Maunakea Street between Queen and King Streets, at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 7 and thus bounded and described:

Beginning at the west corner of this parcel of land, and on the southeast side of Maunakea Street, the true azimuth and distance from a Government Survey Street Monument near the north corner of King and Maunakea Streets being 43° 33' 40" 169.00 feet and coordinates of said Street Monument referred to Government Survey Triangulation Station "PUNCHBOWL" being 124.63 feet south and 4,924.84 feet west and running by azimuths measured clockwise from true South:

1.	237° 15'	44.01	feet along the southeast side of Maunakea Street;
2.	330° 52'	11.49	feet along remainder of R. P. 47, L. C. Aw. 90 to K. Montgomery;
3.	331° 57' 30"	30.82	feet along same;
4.	328° 19' 30"	9.69	feet along same;
5.	65° 06'	13.10	feet along Lot B-1 of Land Court Application 1077 (Map 2);
6.	56° 24'	17.10	feet along same;
7.	56° 24'	12.05	feet along Lot B-3 of Land Court Application 1077 (Map 2);
8.	149° 01'	50.54	feet along remainder of R. P. 47, L. C. Aw. 90 to K. Montgomery to the point of beginning and containing an area of 2,169 square feet, more or less.

Said above described parcel of land having been acquired by THE CITY AND COUNTY OF HONOLULU, a municipal corporation, by FINAL ORDER OF CONDEMNATION dated April 15, 1957, filed in the Circuit Court of the First Judicial Circuit, on April 16, 1957, State of Hawaii, Civil No. 1181, recorded in Liber 3256 at Page 91.

**PARCEL SIXTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant 1615, Land Commission Award 217, Apana 1 to F. Manini and a portion of Royal Patent Grant 47, Land Commission Award 90 to K. Montgomery) situate, lying and being on the northeast side of Maunakea Street between Queen and King Streets, at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 6 and thus bounded and described:

Beginning at the north corner of this parcel of land on the northeast side of Maunakea Street, the true azimuth and distance from a Government Survey Street Monument being the north corner of Maunakea and King Streets being 43° 33' 40" 169.00 feet, and the coordinates of said street monument referred to Government Survey Triangulation Station "PUNCHBOWL" being 124.63 feet south and 4,924.64 feet west and running by azimuths measured clockwise from true South:

1.	329° 01'	50.94	feet;
2.	58° 42'	25.70	feet along the northwest boundary of Lot B-3 of Ld. Ct. App. 1077;
3.	48° 26'	9.80	feet along same;



- |    |          |       |   |
|----|----------|-------|---|
| 4. | 148° 48' | 0.69  | feet along the northeast boundary of R.P. 1614, L. C. Aw. 217, Ap. 2 to A., J. and G. Manini;                           |
| 5. | 68° 04'  | 58.99 | feet along same;  |
| 6. | 148° 45' | 45.73 | feet along same;  |
| 7. | 237° 15' | 94.49 | feet along the northeast side of Maunakea Street to the point of beginning and containing an area of 4,624 square feet. |

Said above described parcel of land having been acquired by THE CITY AND COUNTY OF HONOLULU, a municipal corporation, by FINAL ORDER OF CONDEMNATION dated September 17, 1956, filed in the Circuit Court of the First Judicial Circuit, on September 17, 1956, State of Hawaii, Civil No. 1112, recorded in Liber 3165 at Page 215.

**PARCEL SEVENTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant 1080, Land Commission Award 810, Apana 2 to F. R. and J. Jones) situate, lying and being on the northwest side of Smith Street between Queen and King Streets, at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 3 and thus bounded and described:

Beginning at the east corner of this parcel of land on the northwest side of Smith Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 400.87 feet south and 4,986.54 feet west, and running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 60° 14'  | 121.27 | feet along the northwest side of Smith Street;  |
| 2. | 150° 14' | 73.41  | feet;   |
| 3. | 241° 20' | 118.98 | feet along the east boundary of R.P. 1614, L.C. Aw. 217, Ap. 2 to A.J. and G. Manini;   |
| 4. | 328° 24' | 20.43  | feet along the south boundary of lots B-3 and A-2 of Ld. Ct. App. 1077;   |
| 5. | 328° 22' | 50.75  | feet along the south boundary of Lot 2 of Ld. Ct. App. 910 to the point of beginning and containing an area of 8,680 square feet, more or less. |

Said above described parcel of land having been acquired by THE CITY AND COUNTY OF HONOLULU, a municipal corporation, by FINAL ORDER OF CONDEMNATION dated November 30, 1957, filed in the Circuit Court of the First Judicial Circuit, on

November 30, 1957, State of Hawaii, Civil No. 1114, recorded in Liber 3354 at Page 243.

**PARCEL EIGHTH:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by conveyed to the Hawaiian Government by Paulo F. Manini (Heirs of) by deed dated February 17, 1847 and recorded in Liber 102 at Page 401 (Land Office Deed 4)) situate, lying and being at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 1 and thus bounded and described:

Beginning at the northeast corner of this parcel of land, at the west corner of Central Business Off-Street Parking Lot and on the south side of Maunakea Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 357.10 feet south and 5,212.26 feet west, thence running by azimuths measured clockwise from true South:

1.      340°   44'                      152.23                      feet along Central Business Off-Street Parking Lot;
2.      Thence along the north side of Smith Street on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being:  
  
            68°   40'   56"      16.03                      feet;
3.      Thence along the north side of Smith Street on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:  
  
            99°   42'   10"      27.42                      feet;
4.      160°   44'                      126.45                      feet along the northeast side of Nimitz Highway, Federal Aid Urban Project FU 44(5);
5.      Thence along the south side of Maunakea Street on a curve to the right with a radius of 110.00 feet, the chord azimuth and distance being:  
  
            230°   07'   12"      27.31                      feet;
6.      237°   15'                      14.85                      feet along the south side of Maunakea Street to the point of beginning and containing an area of 5,793 square feet, more or less.

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED AND AGREEMENT TO EXCHANGE

GRANTOR : STATE OF HAWAII, by its Board of Land and Natural Resources

GRANTEE : CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

DATED : February 11, 1991

RECORDED : Document No. 91-019062

**PARCEL NINTH:-**

All of that certain parcel of land (being portion of the land conveyed to the Hawaiian Government by Paulo F. Manini (Heirs of) by deed dated February 17, 1847 and recorded in Liber 102 at Page 401 (Land office Deed 4), all of Grant 4868 to Mrs. A. E. Cunha, Grant 4867 to E. S. Cunha, land conveyed to E. S. Cunha by the Territory of Hawaii by deed dated June 10, 1901 and recorded in Liber 223 at Page 258 (Land Office Deed 4501), portions of Royal Patent 1613, Land Commission Award 217, Apana 3 to Cruz Manini and Royal Patent 1614, Land Commission Award 217, Apana 2 to Antoinette, John and George Manini conveyed to the Territory of Hawaii by Honolulu Iron Works Co. by deed dated April 29, 1908 and recorded in Liber 299 at Page 424 (Land Office Deed 1164), portion of Royal Patent 1080, Land Commission Award 810, Apana 2 to Francis, Rosalie and John Jones conveyed to the Territory of Hawaii by Constantina P. N. Gilliland, et al. by deed dated May 29, 1917 recorded in Liber 472 at Page 456 (Land Office Deed 1819)) situate, lying and being at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 2 and thus bounded and described:

Beginning at the southeast corner of this parcel of land and on the north side of Smith Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 461.00 feet south and 5,091.73 feet west, thence running by azimuths measured clockwise from true South:

1. 60° 14' 71.12 feet along the north side of Smith Street;
2. Thence along the north side of Smith Street on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being:  
62° 32' 33" 9.67 feet;
3. 160° 44' 152.23 feet along the remainder of Deed: Paulo F. Manini (Heirs of) to the Hawaiian Government dated February 17, 1847 and recorded in Liber 102 at Page 401;
4. 237° 15' 109.00 feet along the south side of Maunakea Street;
5. 328° 45' 45.60 feet along R.P. 1615, L.C. Aw. 217, Ap. 1 to

Frank Manini;

- |    |          |        |   |
|----|----------|--------|---|
| 6. | 242° 04' | 58.90  | feet along R.P. 1615, L.C. Aw. 217, Ap. 1 to Frank Manini;  |
| 7. | 328° 48' | 39.98  | feet along Lot B-3 as shown on Map 2 of Land Court Application 1077;  |
| 8. | 61° 20'  | 116.81 | feet along the remainder of R.P. 1080, L.C. Aw. 810, Ap. 2 to Francis Rosalie and John Jones;   |
| 9. | 330° 14' | 73.51  | feet along the remainder of R.P. 1080, L.C. Aw. 810, Ap. 2 to Francis, Rosalie and John Jones to the point of beginning and containing an area of 16,939 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED AND AGREEMENT TO EXCHANGE

GRANTOR : STATE OF HAWAII, by its Board of Land and Natural Resources

GRANTEE : CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

DATED : February 11, 1991

RECORDED : Document No. 91-019062

9. **PAUAHI HALE**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 5597, Land Commission Award 70, Apana 1 to Waiaha) situate, lying and being at Honolulu, Oahu, State of Hawaii, being LOT 2, PAUAHI HALE and thus bounded and described as per survey dated April 13, 2012:

Beginning at the west corner of this parcel of land, the same being south corner of Lot A, Hale Pauahi and on the northerly side of Pauahi Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 345.32 feet north and 4,490.09 feet west and thence running by azimuths measured clockwise from true South:

- |    |          |       |   |
|----|----------|-------|---|
| 1. | 244° 59' | 93.08 | feet along Lot A, along the remainder of R.P. 5597, L.C.Aw. 70, Ap. 1 to Waiaha;  |
| 2. | 331° 37' | 69.11 | feet along Lot A, along the remainder of R.P. 5597, L.C. Aw. 70, Ap. 1 to Waiaha; |
| 3. | 61° 50'  | 87.75 | feet along Lot A, along the remainder of  |

R.P. 5597, L.C.Aw. 70, Ap. 1 to Waiaha;

4.      147°   38'                      74.42                      feet along the northerly side of Pauahi Street to the point of beginning and containing an area of 6,467 square feet, more or less.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR                      :      Y. WA CHINN, husband of Shinn Kam Sun Chinn

GRANTEE                      :      THE CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

DATED                         :      June 30, 1975

RECORDED                    :      Liber 10841 Page 393

10.      **WESTLAKE APARTMENTS**

All of that certain parcel of land situate at Moanalua, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 3268, area 77,620 square feet, more or less, as shown on Map 415, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application Number 1074 of the Trustees under the Will and of the Estate of Samuel M. Damon, deceased;

Together with the right in the nature of an easement for the free flowage of surface waters over and across Easement "665", as shown on Map 371, as through, under, and across Easement "843" as shown on Map 469, of said Application;

Being the land(s) described in Transfer Certificate of Title No. 262,236 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, by and through its Department of Housing and Community Development.

11.      **WEST LOCH VILLAGE**

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 13963, area 6.607 acres, more or less, as shown on Map 1059, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 to the Trustees under the Will and of the Estate of James Campbell, deceased.

Being a portion of the land(s) described in Transfer Certificate of Title No. 609,035 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

12.      **WINSTON HALE**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 1303 to William L. Lee; Royal Patent Grant Number 3164 to J. Kakina and Royal Patent Numbers 7233 and 7261, Land Commission Awards 3 and 69, Apana 2 to Enoka and Mileka Keomailani) situate, lying and being at City and County of Honolulu, Island of Oahu, State of Hawaii, and thus bounded and described:

Beginning at the south corner of this parcel of land, on the northeast side of Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 335.53 feet north and 4,841.86 feet west as shown on Division of Land Survey and Acquisition Parcel Map File No. 17-10-6-18, thence running by azimuths measured clockwise from the true South:

1. 147° 38' 124.56 feet along the northeast side of Hotel Street;
2. Thence along the east corner of Hotel and River Streets, of a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:  
205° 03' 01" 50.56 feet;
3. Thence along the south side of River Street, on a curve to the left with a radius of 1,226.00 feet, the chord azimuth and distance being;  
260° 53' 59" 67.07 feet;
4. 348° 32' 49.80 feet along remainder of Grant 1303 to William L. Lee;
5. 274° 02' 55.10 feet along Grant 1303 to William L. Lee;
6. 318° 05' 1.45 feet along same;
7. 333° 59' 60.61 feet along Lot A-1 (Map) of Land Court Application 955;
8. 64° 39' 31.15 feet along same;
9. 64° 50' 94.16 feet along R.P. 1033, L.C. Aw. 100 to Hoomoeapule to the point of beginning and containing an area of 16,740 square feet, more or less.

#### BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : JAMES REWICK WINSTON, Trustee under unrecorded Revocable Living Trust Agreement dated April 28, 1978, made by James Rewick Winston, Settlor

GRANTEE : CITY AND COUNTY OF HONOLULU

DATED : March 13, 1981

RECORDED : Liber 15408 Page 269

**EXHIBITS B-1 THROUGH B-8  
LEASES AND ADDENDA**

[TO BE ATTACHED]



## **EXHIBIT C-1**

### **LIST OF LEASES AND CONTRACTS TO BE ASSIGNED**

[All leases, contracts, service agreements and other third-party agreements for each Project approved by Buyer pursuant to Section 3.7 of Purchase and Sale Agreement that are not terminated as of the Closing Date.]

## EXHIBIT C-2

### ASSIGNMENT OF LEASES AND CONTRACTS

THIS ASSIGNMENT OF LEASES AND CONTRACTS (this "Assignment") is made as of \_\_\_\_\_, 2012, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i (the "City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

### RECITALS:

A. Concurrently with the delivery of this Assignment, the City has leased to Assignee and Assignee has leased from the City that certain property more particularly described in Exhibit A attached hereto and incorporated herein, located at \_\_\_\_\_ (the "Project") pursuant to that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2012 (the "Purchase Agreement").

B. The City had retained a property manager (the "Property Manager") for the operations, repair and maintenance of the Project. The City and/or the Property Manager (on behalf of the City) may have entered into certain leases, contracts, service agreements and other third-party agreements for the Project. For purposes of this Assignment, the City and Property Manager shall sometimes be collectively referred to as "Assignor".

C. Pursuant to the Purchase Agreement, Assignor is to assign to Assignee and Assignee is to assume certain rights and obligations under certain leases, contracts, service agreements and other third-party agreements for the Project as more fully described on Exhibit B attached hereto and incorporated herein (the "Leases and Contracts").

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

### ARTICLE I

#### ASSIGNMENT OF LEASES AND CONTRACTS

1.1 Assignment and Assumption of Leases and Contracts. As of the Effective Date, as defined in Section 1.3 below, Assignor hereby assigns to Assignee all of Assignor's right, title and interest, if any, in and to the Leases and Contracts. Assignee hereby accepts the foregoing assignment of the Leases and Contracts. The City hereby covenants with Assignee that Assignor has good right to sell and convey said Leases and Contracts; that said Leases and Contracts are free and clear of and from any liens or encumbrances, except as set forth in Exhibit "A" hereto; and that the City will WARRANT AND DEFEND the same unto Assignee, and its successors and assigns, against the lawful claims and demands of all persons, except as aforesaid.

1.2 Assumption of Leases and Contracts. As of the Effective Date, Assignee hereby accepts the foregoing assignment and assumes the Leases and Contracts and agrees to timely keep, perform and discharge all of the obligations of the Assignor under the Leases and Contracts that accrue from and after the Effective Date. Assignee is not assuming any contracts relating to the Project not identified on Exhibit B.

1.3 **Effective Date.** The “**Effective Date**” of this Assignment shall be the date that Assignee acquires the Lease for the project use component of the Project.

1.4 **Indemnification.** The City shall indemnify, protect, defend and hold Assignee harmless from all losses, demands, damages, claims, liabilities, demands, costs, expenses and offset rights, including, without limitation, reasonable attorneys’ fees arising out of any failure of Assignor to so keep, perform and discharge all of the obligations of the lessor and/or owner under the Leases and Contracts that arose or were incurred or accrued prior to the Effective Date. Assignee shall indemnify, protect, defend and hold Assignor harmless from all losses, demands, damages, claims, liabilities, demands, costs, expenses and offset rights, including, without limitation, reasonable attorneys’ fees arising out of any failure of Assignee to so keep, perform and discharge all of the obligations of the lessor and/or owner under the Leases and Contracts that accrue from and after the Effective Date.

## **ARTICLE II**

### **MISCELLANEOUS**

2.1 **Attorneys’ Fees.** In the event of any action between Assignor and Assignee seeking enforcement of any of the terms and conditions to this Assignment, the prevailing party in such action, whether by fixed judgment or settlement, shall be entitled to recover, in addition to damages, injunctive or other relief, its actual costs and expenses, including, but not limited to, reasonable attorneys’ fees, court costs and expert witness fees.

2.2 **Inurement.** This Assignment shall inure to the benefit of Assignor and Assignee, and their respective heirs, assigns and successors in interest.

2.3 **Counterparts.** This Assignment may be signed by the parties in multiple counterparts, all of which taken together shall be deemed to constitute one and the same instrument which shall be binding on all parties.

2.4 **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Hawai’i.

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
Department of Community Services

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Deputy Corporation Counsel

**CITY AND COUNTY OF HONOLULU,**  
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By \_\_\_\_\_  
Name:  
Title:

**"City"**

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

**"Assignee"**

EXHIBIT A  
TO  
EXHIBIT C-2

[PROJECT OR CONDOMINIUM UNIT LEGAL DESCRIPTION]

[TO BE ATTACHED]

**EXHIBIT B  
TO  
EXHIBIT C-2**

**[LEASES AND CONTRACTS]**

**[TO BE ATTACHED]**

## **EXHIBIT D-1**

### **LIST OF PERSONAL PROPERTY AND EQUIPMENT TO BE TRANSFERED**

[All personal property and equipment owned by the City, located at each Project and used in connection with the operation of such Project. Such items to be identified by the City during the Due Diligence Period specified in the Purchase and Sale Agreement, as may be amended prior to Closing, and may include computers, printers, janitorial equipment and supplies, maintenance equipment and supplies, and yard maintenance equipment and supplies.]

EXHIBIT D-2

BILL OF SALE

THIS BILL OF SALE (this "Bill of Sale") is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i (the "City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Buyer").

W I T N E S S E T H:

WHEREAS, the City has agreed to convey to Buyer, and Buyer has agreed to accept from the City, all of the City's right, title and interest, if any, in and to the personal property described in Exhibit A attached hereto and made a part hereof (the "Personal Property"). Any items, accounts, reserves, or tangible or intangible property *not* listed on the attached Exhibit A shall *not* be included in the Personal Property transferred herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the City and Buyer agree as follows:

1. The City hereby sells, assigns and transfers to Buyer all of the Personal Property.
2. The City covenants with Buyer that the City is the lawful owner of such property and has good right to sell and convey the same; that said property is free and clear of and from all liens and encumbrances except as set forth in Exhibit "A" hereto; and that the City will WARRANT AND DEFEND the same unto Buyer, and its successors and assigns, against the lawful claims and demands of all persons, except as aforesaid.
3. Except as aforesaid, Buyer acknowledges that the City has made no representations or warranties regarding the Personal Property including, without limitation, the state of repair of the Personal Property, and Buyer hereby agrees to accept the Personal Property in "AS IS" condition.
4. This Bill of Sale shall be binding upon and inure to the benefit of the successors and assigns of Buyer and the City.
5. This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Hawai'i.

[SIGNATURES APPEAR ON NEXT PAGE]



IN WITNESS WHEREOF, the City and Buyer have executed and delivered this Bill of Sale as of the date first set forth above.

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
Department of Community Services

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Deputy Corporation Counsel

**CITY AND COUNTY OF HONOLULU,**  
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By \_\_\_\_\_

Name:

Title:

**"City"**

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

By \_\_\_\_\_

Name:

Title:

**"Buyer"**



**EXHIBIT A  
TO  
EXHIBIT D-2**

**[LIST OF PERSONAL PROPERTY AND EQUIPMENT ATTACHED TO THE BILL OF SALE]**

**[TO BE ATTACHED]**

EXHIBIT E

SECTION 5.6 HOME RESTRICTIONS

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (XX) PICK-UP ( )

Department of Community Services  
715 South King Street, Suite 311  
Honolulu, Hawaii 96813  
Attention: Community-Based Development Division

TITLE OF DOCUMENT:

USE RESTRICTION AGREEMENT: [Project Name]

PARTIES TO DOCUMENT:

CITY AND COUNTY OF HONOLULU

\_\_\_\_\_, a Hawaii \_\_\_\_\_

PROPERTY DESCRIPTION:

See Exhibit A

TAX MAP KEY NO.: \_\_\_\_\_

**USE RESTRICTION AGREEMENT  
HOME PROGRAM**

**[PROJECT NAME]**

**THIS USE RESTRICTION AGREEMENT** (this "**Agreement**") is between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 ("**City**"), and \_\_\_\_\_, a \_\_\_\_\_, with an office address of \_\_\_\_\_, Hawaii 96\_\_\_\_ ("**Lessee**").

**RECITALS:**

The City and Lessee have agreed to provide for the operation of an affordable rental housing complex targeted to extremely low to lower income family households on certain property in \_\_\_\_\_, identified as Tax Map Key \_\_\_\_\_: \_\_\_\_\_ and more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Project**").

The Project is leased by the City to Lessee pursuant to a Lease dated \_\_\_\_\_, made the City, as lessor and Lessee, as lessee (the "**Lease**"). Said Lease is recorded in \_\_\_\_\_ of the State of Hawaii as Document No. \_\_\_\_\_.

The parties intend that the Lessee will operate the Project as an affordable rental housing complex targeted in part to extremely low to lower income family households.

The City used HUD HOME Program funds in developing the Project. As a consequence, the Project is subject to certain HOME affordability requirements set forth in the Lease, the Cranston-Gonzalez National Affordable Housing Act, 42 USC 1270, et seq., and 24 Code of Federal Regulations ("**CFR**"), Part 92 (collectively, the "**HOME Requirements**").

Lessee's use of the Project must be in compliance with said HOME Requirements for the Term hereinafter set forth.

Now, therefore, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

1. **Term; Automatic Termination.** This Agreement shall be effective from the date this Agreement is executed until \_\_\_\_\_ (the "**Term**"). Upon the expiration of the Term, this Agreement shall automatically terminate and be of no further force and effect.

2. **Use Agreement.** For the Term of this Agreement, Lessee agrees to comply with the HOME Requirements. Without limiting the generality of the foregoing, Lessee shall designate and maintain \_\_\_\_\_ of the residential units in the Project as "HOME-Assisted Units", subject to HOME program income, rent restrictions and income affordability requirements. Of the HOME-assisted units, twenty percent (20%) of the units (\_\_\_\_\_ units) will be affordable to households with income at or below fifty percent (50%) of the area median income as defined

by HUD and adjusted for family size ("AMI"). Eighty percent (80%) of the units (\_\_\_\_\_ units) will be affordable to households at or below sixty percent (60%) of AMI. However, if the rents calculated based on AMI are greater than the Fair Market Rents ("FMR") as established by HUD, FMR is the maximum allowable rent. The HOME-Assisted Units shall be "Floating Units," as defined in the HOME regulations at 24 CFR §92.252(j).

In addition, a minimum of \_\_\_\_\_ units in the Project shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR § 8.32 is considered accessible for this purpose. \_\_\_\_\_ additional units in the Project shall be made accessible for persons with hearing or vision impairments.

3. **Submission of Records.** Lessee agrees to obtain and maintain records which evidence compliance with HOME program use and affordability requirements. Lessee shall promptly provide these records and/or other certifications, statements or records that the City may require to demonstrate compliance upon the City's request.

4. **Violations; City's Remedies.** If the City determines that Lessee is not in compliance with the terms of this Agreement, the City shall provide written notice to Lessee. Upon receipt of the City's notice, Lessee shall have thirty (30) days to cure the violation. The failure to cure any violation to the City's satisfaction within such thirty (30) day period shall constitute a default hereunder and may result in the imposition of any remedies, administrative actions, and/or sanctions provided under or authorized by applicable law and regulations. The parties further agree that upon any default by Lessee, the City may apply to any court, state or federal, for specific performance under this Agreement, and/or for an injunction against violation of this Agreement, since the injury to the City arising from a violation under any terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

5. **Covenants to Run with the Land; Successors and Assigns.** Lessee hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. Lessee hereby declares its express intention that the covenants, reservations and restrictions set forth herein (a) shall be deemed covenants running with the land to the extent permitted by law, (b) shall pass to and be binding upon the successors and assigns in title to the Project throughout the Term, and (c) shall be enforceable by actions at law or in equity by the City, its successors and assigns and/or one or more third-party beneficiaries. For the purpose of this Agreement, a third-party beneficiary shall be any member of a low-income family (as defined in 24 CFR §92.5).

The City hereby agrees that, upon request of Lessee or its successor or assignee in title, made on or after the end of the Term, the City shall execute a recordable instrument approved by the City for the purpose of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the requestor.

6. **Foreclosure; Transfer in Lieu of Foreclosure.** A property foreclosure initiated by a first mortgage holder, or a transfer in lieu of foreclosure, is the only occurrence which may prematurely end the period of affordability, as long as either action is not for the purpose of avoiding affordability restrictions.

7. **Counterparts.** The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together

constitute one and the same Agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The City and Lessee have executed this Agreement on \_\_\_\_\_, 20\_\_.

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
Department of Community Services

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Deputy Corporation Counsel

**CITY AND COUNTY OF HONOLULU,**  
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**"City"**

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**"Lessee"**

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of the City and County of Honolulu, Department of \_\_\_\_\_, and that the foregoing instrument is executed in the name and behalf of said City and County of Honolulu, by and through its Department of \_\_\_\_\_, by \_\_\_\_\_ as its \_\_\_\_\_, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said City and County of Honolulu, by and through its Department of \_\_\_\_\_ by authority of the City Council of the City and County of Honolulu.

Doc. Date: \_\_\_\_\_

# of Pages: \_\_\_\_\_

Doc. Description:  
Use Restriction Agreement  
[Project name]

Print or Type Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
First Judicial Circuit  
My commission expires \_\_\_\_\_



(

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_, a Hawaii \_\_\_\_\_; that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

Print or Type Name: \_\_\_\_\_  
 Notary Public, State of Hawaii  
 First Judicial Circuit  
 My commission expires \_\_\_\_\_

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

[TO BE ATTACHED]

## HUD RIDER TO USE RESTRICTION AGREEMENT

WHEREAS, \_\_\_\_\_, a \_\_\_\_\_  
("Lessee"), has obtained mortgage loan financing from \_\_\_\_\_ (the "Lender") for  
the benefit of the Project which is an FHA insured mortgage, dated of even date herewith, FHA  
Project No. \_\_\_\_\_, and HUD is requiring that the lien and covenants of the Use  
Restriction Agreement (the "**Agreement**") be subordinated to the lien, covenants, and  
enforcement of the mortgage securing such HUD loan.

The City and County of Honolulu, a municipal corporation of the State of Hawaii (the  
"**City**"), has agreed to subordinate the Agreement to the lien of the HUD Mortgage in  
accordance with the terms of this Rider.

### Statement of Agreement

NOW, THEREFORE, in consideration of the foregoing and for other consideration, the  
receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A new Section 8 shall be incorporated into the Agreement as follows:

8. **HUD Requirements.** Notwithstanding anything in this agreement to the  
contrary:
  - (a) In the event of any conflict between any provision contained  
elsewhere in this Agreement and any provision contained in this  
Section 8, the provision contained in this Section 8 shall govern  
and be controlling in all respects.
  - (b) The following terms shall have the following definitions:

"**HUD**" means the United States Department of Housing and  
Urban Development.

"**HUD Regulatory Agreement**" means the Regulatory Agreement  
between Lessee and HUD with respect to the Project, as the  
same may be supplemented, amended or modified from time to  
time.

"**Lender**" means \_\_\_\_\_, its successors  
and assigns.

"**Mortgage**" means the Mortgage from Lessee in favor of the  
Lender, as the same may be supplemented, amended or  
modified.

"**Mortgage Loan**" means the deed of trust loan to be made by the  
Lender to Lessee pursuant to the Mortgage Loan Documents  
(defined below) with respect to the Project (defined below).

**"Mortgage Loan Documents"** means the Mortgage, the HUD Regulatory Agreement and all other documents required by HUD or the Lender in connection with the Mortgage Loan.

**"National Housing Act"** means the National Housing Act of 1934, as amended.

**"surplus cash"** has the meaning specified in the HUD Regulatory Agreement.

**"residual receipts"** has the meaning specified in the HUD Regulatory Agreement.

- (c) Notwithstanding anything in this Agreement to the contrary, except the requirements in 26 U.S.C. § 42(h)(6)(E)(ii), the provisions hereof are expressly subordinate to (i) the Mortgage, (ii) the HUD Regulatory Agreement and (iii) the National Housing Act, all applicable HUD mortgage insurance (and Section 8, if applicable) regulations and related administrative requirements. In the event of any conflict between the provisions of this Agreement and the provision of the Mortgage, HUD Regulatory Agreement, or the National Housing Act, any applicable HUD regulations or related administrative requirements, the Mortgage Loan Documents, the National Housing Act, the HUD regulations, related administrative requirements and the Mortgage Loan Documents shall control and supersede the enforcement of this Agreement.
- (d) In the event of foreclosure or the transfer of title by deed in lieu of foreclosure, this Agreement (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. § 42(h)(6)(E)(ii) above.
- (e) Lessee and the City acknowledge that Lessee's failure to comply with the land-use covenants provided in this Agreement does not and shall not serve as a basis for default under the terms of the Mortgage, the HUD Regulatory Agreement, or any other document relating to the Mortgage Loan to Lessee for the Project, but to the extent required by applicable law shall be reported by the City to the Internal Revenue Service.
- (f) Except for the City's reporting requirement, in enforcing this Agreement the City will not file any claim against the Project or any reserve or deposit required by HUD in connection with the Mortgage or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
  - i. Available surplus cash, if Lessee is a for-profit entity;
  - ii. Available distributions and residual receipts authorized for release by HUD, if Lessee is a limited distribution entity; or

- iii. Available residual receipts authorized by HUD, if Lessee is a non-profit entity.
- (g) Other than for the purpose of including a good-cause-only eviction covenant, during the period that any balance of the HUD indebtedness or obligations remain outstanding, Lessee and the City shall not further amend this Agreement without the prior written consent of HUD.
- (h) Except as contemplated by this Agreement, the City shall take no action to preserve the low-income housing tax credits awarded to the Project, or to prohibit Lessee from taking any action that might jeopardize the low-income housing tax credits, except in strict accord with the National Housing Act, applicable mortgage insurance regulations, the HUD loan documents for the Project, or if applicable to the Project, Section 8 of the U.S. Housing Act of 1937 and the regulations thereunder.
- (i) Subject to the HUD Regulatory Agreement, Lessee shall indemnify and hold the City harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the City relating to the subordination and covenants set forth in this Agreement; provided, however, that Lessee's obligation to indemnify and hold the City harmless shall be limited to available surplus cash and/or residual receipts of Lessee.
- (j) Lessee and the City further agree that if at any time any covenant or restriction of this Agreement shall be determined by the Internal Revenue Service to be an event invalidating or terminating the award of low-income housing tax credits awarded to the Project, then in such event such covenant or restriction provided herein shall immediately and automatically terminate.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

EXHIBIT F

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ☒ Pickup ☐ To:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Total Pages: \_\_\_\_\_

Tax Map Key No.: \_\_\_\_\_

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i, whose address is 530 South King Street, Honolulu, Hawai'i 96813 ("**Lessor**"), and \_\_\_\_\_, a \_\_\_\_\_, whose place of business and post office address is \_\_\_\_\_ ("**Lessee**").

A. Lessor is the owner of that certain property located at \_\_\_\_\_, Hawai'i 96\_\_\_\_, containing approximately \_\_\_\_\_ square feet, and more particularly described in the attached **Exhibit A** (the "**Land**"). Lessor and Lessee have entered into a Lease of the Land and the improvements on such Land (the "**Improvements**") as set forth below.

AGREEMENT

**NOW, THEREFORE**, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Premises.** Lessor hereby leases the Land and the Improvements to Lessee and Lessee hereby hires the Land and such Improvements from Lessor, upon the terms and conditions of that certain unrecorded lease dated of even date herewith (the "**Lease**"), the terms and conditions of which are incorporated herein by this reference.

2. **Term.** The term of the Lease commences on \_\_\_\_\_, \_\_\_\_\_, and expires, if not sooner terminated pursuant thereto, on \_\_\_\_\_, \_\_\_\_\_.

3. **No Options; No Right of First Refusal.** Lessee has no renewal or extension options. Lessee has no option to purchase the Land, but Lessor has agreed to give Lessee notice of any intended sale by Lessor of the Land and Improvements.

4. **Controlling Document.** This Memorandum of Lease is subject to all the terms and conditions of the Lease. Should there be any inconsistency between the terms of this instrument and the Lease, the terms of the Lease shall prevail.

5. **Counterparts.** This Memorandum of Lease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Lease as of the date first above written.

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
Department of Community Services

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Deputy Corporation Counsel

**CITY AND COUNTY OF HONOLULU,**  
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By \_\_\_\_\_

Name:

Title:

**"City"**

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

By \_\_\_\_\_

Name:

Title:

**"Lessee"**



[ATTACH ACKNOWLEDGEMENTS]

EXHIBIT A  
TO  
EXHIBIT F

[LAND DESCRIPTION]

[TO BE ATTACHED]

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

**RESOLUTION 12-228, FD1**

Introduced: 08/28/12 By: ERNEST MARTIN (BR)

Committee: BUDGET

Title: RESOLUTION AUTHORIZING EXECUTION OF A PURCHASE AND SALE AGREEMENT RELATING TO THE ACQUISITION OF LEASES OF TWELVE CITY-OWNED AFFORDABLE HOUSING PROJECTS BY HONOLULU AFFORDABLE HOUSING PARTNERS, LLC, AS PART OF THE HONOLULU AFFORDABLE HOUSING PRESERVATION INITIATIVE.

Links: [RES12-228](#)  
[RES12-228, FD1](#)  
[CR-347](#)

Voting Legend: Y= Aye, Y\* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

BUDGET	09/19/12	RESOLUTION NOT REPORTED OUT; PENDING IN COMMITTEE.							
BUDGET	10/02/12	CR-347 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.							
COUNCIL	10/03/12	ACTION ON CR-347 AND RESOLUTION 12-228 DEFERRED.							
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	Y	GARCIA	Y
HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y				
SPECIAL COUNCIL	10/11/12	RESOLUTION AMENDED TO FD1.							
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	Y	GARCIA	Y
HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y				
CR-347 AND RESOLUTION 12-228, FD1 WERE ADOPTED.									
ANDERSON	Y	BERG	N	CACHOLA	N	CHANG	Y*	GARCIA	Y*
HARIMOTO	Y	KOBAYASHI	Y*	MARTIN	Y*				

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER